

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LONE STAR TECHNOLOGICAL) (
INNOVATIONS, LLC,) (
PLAINTIFF,) (CIVIL ACTION NO.
) (6:19-CV-59-RWS
VS.) (
) (
) (TYLER, TEXAS
) (
ASUSTEK COMPUTER, INC.,) (MAY 17, 2021
DEFENDANT.) (8:21 A.M.

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ROBERT W. SCHROEDER, III

UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF: Mr. Joshua J. Bennett
Mr. Bradley D. Liddle
Ms. Monica Litle
CARTER ARNETT, PLLC
8150 N. Central Expressway
5th Floor
Dallas, Texas 75206

Mr. John D. Saba, Jr.
WITTLIFF & CUTTER, PLLC
1209 Nueces Street
Austin, Texas 78701

Mr. John Lee
BANIE & ISHIMOTO, LLP
2100 Geng Road
Suite 210
Palo Alto, California 94303

COURT REPORTER: Ms. Kate McAlpine, RPR, CSR, CCR
Federal Official Court Reporter
Texarkana Division
500 N. State Line Avenue
Texarkana, Texas 75501

(Proceedings recorded by mechanical stenography, transcript produced on a CAT system.)

FOR THE DEFENDANT:

Mr. Vinay V. Joshi
Mr. Andrew T. Oliver
AMIN, TUROCY, & WATSON
160 W. Santa Clara Street
Suite 975
San Jose, California 95113

P R O C E E D I N G S

THE COURT: Okay. We are on the record.

It's 8:20 back in chambers. The panel should be ready for us fairly soon once they have been qualified. Each side has been given 30 minutes for voir dire and then openings. I know there were a number of filings over the weekend, both Saturday and yesterday.

Anything we need to address before voir dire?

MR. BENNETT: Yes, Your Honor. Plaintiffs have an issue with -- an objection to Exhibit 26 and its subparts. We filed a brief, it's Exhibit -- it's Document 205 on this.

THE COURT: I read it.

MR. BENNETT: Okay. So what we've proposed there is that the exhibit should come in. They waived objections or the objections have no merit. There's authentication objections. They have no merit because the documents are ASUS manuals. We've brought examples here if Your Honor wants to inspect them -- Your Honor's version of that -- a copy of Exhibit 26 and its subparts.

So they're authenticated because they're all ASUS manuals, bear ASUS's tradename, trademarks, copyright. It's all about ASUS products. They compare with the ASUS manuals on their exhibit list -- on ASUS's exhibit list.

So for all those reasons, they're authentic, and

08:22:27 1 then they're just not hearsay at all and that's part of
08:22:30 2 their objection, if they have an objection at all and they
08:22:33 3 didn't waive it.

08:22:34 4 So we would submit that they should -- they're not
08:22:37 5 automatically admitted, but those objections shouldn't keep
08:22:41 6 them out and we need to get them through a sponsoring
08:22:41 7 witness, which in this case will be Dr. Ducharme for us.
08:22:43 8 So he could take the stand today. It's possible. That's
08:22:45 9 why part of this is -- that's why part of this is relevant
08:22:51 10 for today's purposes.

08:22:52 11 Some of these exhibits may also come up on
08:22:55 12 Mr. Lin, one of the witnesses that we've called of theirs.

08:22:58 13 THE COURT: Is he an engineer?

08:23:01 14 MR. BENNETT: He is a technical person, yes, Your
08:23:05 15 Honor.

08:23:05 16 THE COURT: All right.

08:23:06 17 MR. JOSHI: So, Your Honor -- so firstly, I'll
08:23:09 18 address waiver, then authentication, then hearsay.

08:23:13 19 These -- what happened at the pretrial conference,
08:23:16 20 that the exhibit list had a summary document. And the
08:23:18 21 summary document was -- it had numbers, then it had
08:23:21 22 their -- referenced their infringement chart, then each
08:23:25 23 number had one, two, three, or four documents associated
08:23:28 24 with it. And then they had a web link where they got it
08:23:31 25 from. That summary document is what they wanted to be the

08:23:34 1 exhibit.

08:23:34 2 Then, during the meet and confer, they -- later on
08:23:38 3 after pretrial conference when you said each witness -- we
08:23:41 4 have to use it with a witness before the document comes in,
08:23:45 5 they said essentially all of these are our documents.

08:23:49 6 Well, the problem is we don't know who pulled
08:23:52 7 them. And if you look at the websites, they're from
08:23:54 8 different websites. They're not ASUS websites. They're
08:23:56 9 Walmart, they're this, they're that. We -- then -- now,
08:23:58 10 they -- later on they reduced it down to just 139
08:24:01 11 documents. We pick one, use it for each product, okay?

08:24:05 12 So firstly, we couldn't have waived it because the
08:24:08 13 exhibits aren't the way they are now at the time that we
08:24:12 14 had the pretrial conference. Authentication, they're not
08:24:15 15 going to bring a witness -- they don't have a witness on
08:24:17 16 their witness list who can say: I got these documents from
08:24:21 17 here. That's the first thing.

08:24:22 18 They cited a number of cases. We read those
08:24:26 19 cases. There was always a witness. It was either produced
08:24:29 20 by the other side or it had a signature of the person that
08:24:34 21 they were saying it's the signature of. Even in the cases
08:24:40 22 of it was a trademark, there was always like their -- that
08:24:41 23 company's trademarks but then other things also.

08:24:44 24 So somehow if you get past authentication, then
08:24:48 25 they have a hearsay problem. Now, with respect to hearsay

08:24:53 1 they make a very circular argument. They say -- first of
08:24:53 2 all, they say it's -- one argument is it's not hearsay
08:24:57 3 because these are instructions, and instructions are not
08:24:59 4 proffered for the proof of the matter asserted. But then
08:25:02 5 what they really want to use them for -- so they want to
08:25:03 6 get around hearsay that way by saying --

08:25:07 7 THE COURT: So can you respond to that
08:25:08 8 specifically? Why is it hearsay? Why is it being offered
08:25:12 9 for the truth of the matter asserted?

08:25:19 10 MR. JOSHI: Well, because these user guides are --
08:25:20 11 they want to use it for inducement. So what they want to
08:25:23 12 say is that these user guides tell customers what to do.
08:25:27 13 So the truth of the matter asserted is --

08:25:27 14 UNIDENTIFIED PERSON: (Whispering.)

08:25:33 15 MR. JOSHI: Right. Right.

08:25:34 16 And also, not just for inducement but also to
08:25:37 17 prove this is how the products operate. So their expert
08:25:40 18 reviewed them to say, I believe there is infringement
08:25:44 19 because the products operate according to these user
08:25:44 20 manuals.

08:25:48 21 So we think that a compromised solution here is
08:25:52 22 that he can use them as a demonstrative, he can rely on
08:25:54 23 them, but they can't come in as exhibits.

08:25:57 24 THE COURT: Were these -- all of these exhibits
08:26:01 25 disclosed timely?

08:26:02 1 MR. BENNETT: They were disclosed timely in this
08:26:05 2 fashion. And we talked about this at the May 11 hearing.
08:26:09 3 We did list them on our exhibit list as Exhibit 26 because
08:26:13 4 those were the documents that Dr. Ducharme had relied on.
08:26:18 5 All of them included the user manuals.

08:26:19 6 When Your Honor directed us to confer, we
08:26:24 7 conferred. And we heard their objection about it's too
08:26:26 8 much. We said: Okay. We understand. We'll just strip
08:26:29 9 off and leave the user manuals. So that's what we did.

08:26:33 10 We heard argument at length on May 11th about how
08:26:36 11 Mr. Joshi didn't want those documents back in the jury
08:26:39 12 room, and that's why he was objecting because he didn't
08:26:42 13 think we had a sponsoring witness.

08:26:44 14 So we tried to address that in our meet and confer
08:26:46 15 and showed them, look, we reduced the materials. We --
08:26:52 16 fits squarely within the 250 exhibit limit under the
08:26:56 17 Court's order. All of these materials are the user
08:26:58 18 manuals. Dr. Ducharme, yes, he relied on them, but they're
08:27:03 19 your documents.

08:27:04 20 I think what he's saying is we didn't produce
08:27:07 21 them. Well, that's a problem. They didn't produce them.
08:27:10 22 That's why we engaged in self-help and got them ourself.

08:27:14 23 So we've done that. They didn't produce them.
08:27:17 24 Now they want to use that against us as a means of not
08:27:21 25 authenticating the documents even though on their face

08:27:24 1 they're ASUS documents.

08:27:24 2 So I think the authentication problem is a
08:27:27 3 non-issue.

08:27:28 4 As for hearsay, either way, whether it's what they
08:27:31 5 say for the truth of the matter to prove infringement, it's
08:27:36 6 not hearsay still under 801(d) because it's a statement of
08:27:39 7 a party opponent, right? Or on the other side, if it's not
08:27:43 8 -- if it's just instructions, then it's not hearsay
08:27:46 9 under -- if it's not a statement for the truth of the
08:27:48 10 matter.

08:27:49 11 So if it's just to show the instructions are given
08:27:51 12 to users, that's all it's for. It's not for the truth. If
08:27:55 13 it is to prove infringement, then it's a party admission,
08:27:57 14 and it comes in under 801(d).

08:28:00 15 THE COURT: Well, let me say this, Mr. Joshi.
08:28:02 16 With respect to the waiver issue, our orders, I believe,
08:28:06 17 are quite clear that we expect any objections to exhibits
08:28:11 18 to be raised at the pretrial conference. That avoids
08:28:15 19 having, you know, matters like this pop up on the eve of
08:28:19 20 trial. We had a pretrial conference. We could have
08:28:24 21 discussed this.

08:28:26 22 So, I mean, I think that's the point to requiring
08:28:29 23 objections be served on the other side so that you-all can
08:28:34 24 try to resolve any issues prior to that. And if you can't,
08:28:39 25 bring it to my attention so that we can get those issues

08:28:43 1 resolved well before the trial to avoid, frankly, precisely
08:28:49 2 these kinds of events.

08:28:52 3 My question at the end of the day -- I want to
08:28:55 4 think about what you all have said about this -- is does
08:29:00 5 any of this need to be resolved before voir dire? In other
08:29:06 6 words, could we -- could we go ahead and get the jury
08:29:11 7 selected and then before openings, I will tell you how I'm
08:29:15 8 going to deal with this?

08:29:18 9 MR. BENNETT: Yes, I think -- for Plaintiff's
08:29:20 10 part, that would be acceptable, Your Honor.

08:29:22 11 MR. JOSHI: We think that's fine, too, Your Honor.
08:29:25 12 And I'll just make one minor correction.

08:29:28 13 I don't want to quibble, but it's not true that we
08:29:31 14 didn't produce these user manuals. They are ASUS user
08:29:35 15 manuals with ASUS Bates stamps on them, and they will
08:29:37 16 100 percent be party admissions by us. And they come from
08:29:40 17 -- coming from us, it's also verified that they get sold in
08:29:43 18 the United States. There are many English speaking
08:29:45 19 countries. And just because a manual is in English,
08:29:50 20 doesn't mean it's meant for United States, but if we
08:29:52 21 produced it, then it does so they can use those.

08:29:54 22 THE COURT: So why were these not produced?

08:29:57 23 MR. JOSHI: Because they -- I don't believe they
08:29:58 24 are -- many of them are from third parties, and so we
08:30:01 25 attached a sample of that. You know, and these electronic

08:30:05 1 parts come out, many people write about them, they have
08:30:08 2 their own user guides and such, but the ones --

08:30:13 3 THE COURT: These are not ASUS-produced documents?

08:30:16 4 MR. JOSHI: We haven't verified every one, but we
08:30:17 5 found many in that -- the 26 group. There's like a company
08:30:18 6 called Eizo. There are a couple of documents from them we
08:33:21 7 found. And then we found the -- we found the -- you know,
08:33:21 8 because on the P-26, they mention the websites where they
08:33:21 9 got them from, and there are many non-ASUS websites.

08:33:21 10 THE COURT: So do we have some representative
08:33:21 11 copies that you can leave us?

08:33:21 12 MR. BENNETT: There were two attached to 205, the
08:33:21 13 document that brings out the issues. If you want to look
08:33:21 14 at all of them, they're in these binders here for
08:33:21 15 Your Honor.

08:33:21 16 THE COURT: Okay.

08:33:21 17 MR. BENNETT: And we brought this for you.

08:33:21 18 THE COURT: Excellent. If you'll just leave that,
08:33:21 19 that would be very helpful.

08:33:21 20 MR. BENNETT: Yes, Your Honor.

08:33:21 21 THE COURT: Okay. Anything else we need to
08:33:21 22 address before we select the jury?

08:33:21 23 MR. BENNETT: There were some objections to
08:33:21 24 demonstratives that we may need -- if we pick a jury -- I
08:33:21 25 guess we're going to have a break in between.

08:33:21 1 THE COURT: We will.

08:33:21 2 MR. BENNETT: So we can handle that then, I guess
08:33:22 3 if that's what Your Honor wants to.

08:33:22 4 THE COURT: We will.

08:33:22 5 Let me tell you the only other thing I want you
08:33:22 6 all to think about during voir dire is -- as I told you all
08:33:22 7 at the pretrial conference, I do a fairly thorough voir
08:33:22 8 dire myself.

08:33:22 9 At some point in there, maybe midway through, I
08:33:22 10 will call upon each side to stand up, introduce yourself,
08:33:22 11 introduce your client, those who are at the table with you,
08:33:22 12 and then I'll ask you to go through the names of any
08:33:22 13 witnesses who may be called to testify so that I can voir
08:33:22 14 dire the jury about any knowledge of law firms, lawyers,
08:33:22 15 witnesses. So just a little heads-up in that regard.

08:33:22 16 Okay. Anything else?

08:33:22 17 MR. BENNETT: Not right now.

08:33:22 18 THE COURT: All right. Do we have the -- looks
08:33:22 19 like we have the seating chart.

08:33:22 20 COURT DEPUTY: Uh-huh. The seating chart and then
08:33:22 21 the questionnaires. I think she's got more questionnaires
08:33:22 22 to make copies of.

08:33:22 23 MR. BENNETT: Thank you.

08:33:22 24 COURT DEPUTY: I gave you four copies. If you
08:33:22 25 need more, I can get them.

08:33:22 1 MR. JOSHI: Thank you so much.

08:33:22 2 MR. BENNETT: Thank you very much.

08:33:22 3 THE COURT: Let me tell you one other thing. We
08:33:22 4 will deal with hardship issues at the very end. And if
08:33:22 5 there are persons in the panel that you -- on the panel you
08:33:22 6 want to or need to question further outside the presence of
08:33:22 7 the other panel members for purposes of cause challenges or
08:33:22 8 anything like that, at the very end of both party's
08:33:22 9 voir dres, I will ask you to hand up a list of juror names
08:33:22 10 and/or numbers of people you want to voir dire separately,
08:33:22 11 and we will ask them to remain in the courtroom, and we
08:33:23 12 will dismiss everybody else to be taken to another
08:33:23 13 courtroom to wait for a few minutes while we do that.

08:33:23 14 I'm not suggesting that you will have anyone like
08:33:23 15 that, but if you do, there's somebody who had said
08:33:23 16 something during the voir dire process that you want to ask
08:33:23 17 further questions of with respect to a potential cause
08:33:23 18 challenge, just tell me their name and number. You can
08:33:25 19 write it down. I'll ask you to hand those lists up, and
08:33:29 20 we'll do that at the very end of the voir dire. I'll
08:33:32 21 dismiss everybody else, and then we'll bring them up one by
08:33:38 22 one.

08:33:38 23 Any questions about that?

08:33:39 24 Okay. See you out there.

08:57:13 25 (Recess.)

09:44:20 1 THE COURT: Please be seated.

09:44:23 2 Mrs. Schroeder, would you call the case for us?

09:44:30 3 COURT DEPUTY: Civil Action No. 6:19-CV-59, Lone
09:44:37 4 Star Technological Innovations, LLC, versus ASUSTeK
09:44:40 5 Computer, Inc.

09:44:40 6 THE COURT: Is the Plaintiff ready to proceed?

09:44:43 7 MR. BENNETT: We are, Your Honor.

09:44:45 8 THE COURT: Is the Defendant ready to proceed?

09:44:48 9 MR. JOSHI: We're ready, Your Honor.

09:44:49 10 THE COURT: Very well.

09:44:50 11 Good morning, ladies and gentlemen. I want to
09:44:52 12 thank you for being here on this wet May morning. I wish
09:44:56 13 the weather had been a little better for you all getting
09:45:01 14 into the courthouse.

09:45:02 15 I want to thank you for being here, and I want to
09:45:07 16 welcome you to jury service in the United States District
09:45:11 17 Court for the Eastern District of Texas.

09:45:13 18 I'm Judge Trey Schroeder. You've already met some
09:45:20 19 of our court personnel this morning, but I want to
09:45:25 20 introduce the members of my court staff.

09:45:28 21 My courtroom deputy is Ms. Betty Schroeder.

09:45:31 22 Ms. Kate McAlpine is our court reporter.

09:45:33 23 The law clerks who assist me are Jonathan Powers,
09:45:38 24 Susan Stradley, and Elizabeth Conners.

09:45:43 25 Today and for the rest of the week, our court

09:45:48 1 security officer will be Mr. Steven Richardson.

09:45:51 2 I want to begin by thanking you for serving your
09:45:55 3 country. These are especially trying times. Obviously, we
09:46:02 4 have new responsibilities in terms of the restrictions on
09:46:06 5 our lives that the pandemic has placed. I am asking
09:46:13 6 everybody to wear their mask in the courtroom unless you're
09:46:16 7 speaking.

09:46:18 8 All of our life responsibilities right now are a
09:46:22 9 little more serious, and our intrusion as a court into your
09:46:27 10 lives by asking you to potentially serve as jurors in this
09:46:31 11 matter may be even more jarring.

09:46:33 12 As I wrote to you in my letter regarding jury
09:46:38 13 service, we've taken a number of important steps to enhance
09:46:41 14 your health and safety during jury selection and the trial
09:46:45 15 if you are selected as a juror.

09:46:47 16 You all obviously know we've got social distancing
09:47:00 17 requirements here in the courtroom. As I said, everyone
09:47:03 18 has masks on. We do have gloves and hand sanitizer
09:47:08 19 throughout the courtroom if anyone needs them.

09:47:10 20 Once the trial begins, we will be providing lunch
09:47:14 21 each day, and the courtroom has been reconfigured to meet
09:47:20 22 the needs of social distancing.

09:47:22 23 The jury will be seated where you are seated now
09:47:26 24 in the gallery. The witness will actually be in what's
09:47:29 25 normally the witness box.

09:47:32 1 There's also some air purifiers throughout the
09:47:37 2 courtroom to help keep the air clean and circulating.

09:47:41 3 As I said, I'm Judge Schroeder. I'm a United
09:47:45 4 States District Judge for the Eastern District of Texas. I
09:47:46 5 live in Texarkana where I was born and grew up. I
09:47:51 6 practiced law for about 15 years before I went on the bench
09:47:59 7 six years ago. I have a few remaining cases in Tyler. I
09:48:05 8 have responsibility for the docket in Texarkana, and I have
09:48:08 9 a few cases in Marshall and Sherman, as well.

09:48:13 10 I'll just tell you a little bit about myself, and
09:48:16 11 the reason I do that is in a few minutes, I'm going to ask
09:48:20 12 all of you to tell us something about yourself, as well,
09:48:23 13 and I think you are as entitled to know as much about me as
09:48:28 14 we will soon learn about you.

09:48:30 15 As I said, I grew up in Texarkana. I went to
09:48:34 16 college in Missouri and then in Arkansas, and I graduated
09:48:37 17 from law school in Washington, D.C. I was, as I said, in
09:48:44 18 private practice for about 15 years. Before that, I
09:48:47 19 clerked for a federal appellate judge, and I also worked in
09:48:54 20 the government in Washington as an attorney for a couple of
09:48:58 21 years.

09:48:58 22 I'm married. I have two daughters who are juniors
09:49:02 23 in college. And my wife is a lawyer, too, but she doesn't
09:49:06 24 practice law anymore.

09:49:09 25 I want to tell you a little bit about this trial

09:49:13 1 and what we're going to be doing here this week. This is a
09:49:17 2 civil case involving patent infringement.

09:49:21 3 You, as potential jurors, are performing a pivotal
09:49:26 4 role in our system of justice, and I hope that you will
09:49:29 5 consider it an honor to serve in this important role
09:49:33 6 because that's what it is.

09:49:35 7 By asking you to be here to potentially serve as
09:49:38 8 jurors in this matter, we're asking you to be away from
09:49:43 9 your jobs, your families, and your other responsibilities.
09:49:47 10 For those of you who have children at home, I know how
09:49:50 11 hectic your lives are. The same goes for those of you who
09:49:54 12 may be a caregiver to a family member or a friend.

09:49:58 13 By asking you to be here and to potentially serve
09:50:01 14 as a juror, we are creating an intrusion into your lives,
09:50:04 15 but the reason we do it is we have important work for you
09:50:09 16 to do.

09:50:10 17 This is the 42nd case I will have tried as a
09:50:15 18 judge, and I believe that your experience as a juror, if
09:50:18 19 you are selected to serve, will depend in large part on
09:50:22 20 what your initial frame of mind is. So I want to give you
09:50:25 21 a little bit of context about the role of the jury in our
09:50:29 22 system of government.

09:50:31 23 Our Constitution begins with the words "We the
09:50:36 24 People," and in its most inclusive form, it invites the
09:50:39 25 people to join in the creation and maintenance of

09:50:42 1 government. Those words recognize that the power of the
09:50:46 2 government come from the people and -- comes from the
09:50:51 3 people. And just as suffrage ensures the people's ultimate
09:51:00 4 control in the legislative and executive branch, the jury
09:51:03 5 trial is meant to ensure their control in the judiciary.

09:51:07 6 Jury service is an exercise of responsible
09:51:11 7 citizenship by all members of our community. Our
09:51:15 8 Constitutional system postulates a conscious duty of
09:51:22 9 participation in the machinery of justice, and it is an
09:51:25 10 opportunity for you, as an ordinary citizen, to help
09:51:28 11 administer justice. It's an opportunity that has been
09:51:32 12 recognized as one of the principal justifications for
09:51:35 13 retaining the jury system under our Constitution.

09:51:39 14 No doubt many of your parents served on juries,
09:51:43 15 and perhaps grandparents, as well. The tradition of jury
09:51:47 16 trials in our country stretches back many generations from
09:51:52 17 today all the way back, in fact, to 1776. So, yes, while
09:51:57 18 it may be an inconvenience for you at some level to be
09:52:03 19 here, I hope you will understand that it is much more than
09:52:06 20 that.

09:52:06 21 I firmly believe that jury service is one of the
09:52:10 22 highest forms of public service that you can render to your
09:52:17 23 country as a citizen.

09:52:19 24 Of course, the highest form of public service
09:52:22 25 centers around those young men and women who serve in our

09:52:29 1 Armed Forces and who put their lives on the line every day
09:52:32 2 to protect and to guarantee for all of us the rights and
09:52:36 3 the freedoms that we enjoy as Americans. Those young men
09:52:42 4 and women in the Armed Forces, they don't get to decide
09:52:45 5 where it is they're going. They go where their country
09:52:49 6 asks them to when their country asks them to.

09:52:51 7 So by being here today and by participating as you
09:52:54 8 are, you're doing what your country is asking you to do,
09:52:58 9 too. And jury service is our chance, in a way, perhaps not
09:53:01 10 to repay the debt we owe to our country, but at least to
09:53:08 11 acknowledge it in some way and to recognize it.

09:53:11 12 So I hope you will think about your time here this
09:53:14 13 morning serving on this panel and on the jury if you're
09:53:17 14 selected to serve, perhaps in a little bit different light,
09:53:21 15 as an opportunity for you to serve your country by seeking
09:53:25 16 to do justice between these two parties.

09:53:28 17 As I said, this is a patent infringement case
09:53:31 18 where the Plaintiff, Lone Star, claims that the Defendant,
09:53:39 19 A-S-U-S, ASUSTeK, infringes its patent.

09:53:48 20 ASUS denies infringing the patent and says that
09:53:52 21 the patent is invalid. I and the parties will have much
09:53:56 22 more to say about what this case involves, but for now, I
09:53:59 23 wanted you to have some basic knowledge of what the case is
09:54:06 24 about.

09:54:06 25 I anticipate that the presentation of evidence

09:54:08 1 will take about four days. We'll begin the trial this
09:54:11 2 afternoon. So we will conclude -- should conclude no later
09:54:13 3 than this Friday, May 21st. Those of you who are selected
09:54:18 4 as our jury, of course, will need to be available this
09:54:23 5 week.

09:54:23 6 If any of you have any prepaid vacations planned
09:54:27 7 that you have already bought nonrefundable tickets for, if
09:54:33 8 you have a surgery that is scheduled this week, or anything
09:54:36 9 else that is serious enough to make it very difficult for
09:54:39 10 you to serve, then I need for you to identify yourself.

09:54:43 11 If there's anybody on the panel who has those
09:54:46 12 types of reasons that they could not serve, if you would,
09:54:49 13 please raise your hand, and we'll discuss the specifics
09:54:54 14 later, but I'd just like to know if there's anyone now who
09:54:57 15 falls into that category.

09:54:59 16 Anybody on the left side of the room at all?

09:55:03 17 On to right side?

09:55:05 18 Let's see, is it Mr. Wilkinson?

09:55:13 19 PANEL MEMBER: Yes, sir.

09:55:21 20 THE COURT: Okay. All right. Yes, ma'am. Is it
09:55:24 21 Ms. Elson?

09:55:25 22 PANEL MEMBER: Yes, sir.

09:55:26 23 THE COURT: Okay. Thank you, ma'am.

09:55:28 24 And someone else? Ms. Morrow?

09:55:31 25 Ms. Decco?

09:55:32 1 PANEL MEMBER: Yes.

09:55:33 2 THE COURT: Okay. All right. Thank you,
09:55:37 3 Ms. Decco.

09:55:38 4 Anyone else? All right. Very well.

09:55:39 5 Now, I want to give you a little overview about
09:55:42 6 what is going to be happening over the next few days.

09:55:47 7 Right now, we are beginning the first stage of the
09:55:50 8 trial, what we call the voir dire examination of the panel,
09:55:53 9 and that is where I and the attorneys will be asking you
09:55:56 10 some questions to help us evaluate you as a potential
09:56:00 11 juror.

09:56:01 12 When the parties address you this morning, they
09:56:05 13 will be asking you various questions, and I want you to
09:56:10 14 understand that they are not seeking to pry unduly into
09:56:13 15 your private affairs. They are entitled to ask questions
09:56:17 16 to secure a fair and impartial jury.

09:56:22 17 I don't know if it will happen today, but
09:56:24 18 sometimes panel members are asked a question that they
09:56:29 19 don't really want to talk about in front of the whole
09:56:32 20 panel, and if you have any hesitancy about giving a
09:56:37 21 complete answer to something that is private, you just need
09:56:40 22 to say that you want to talk about it to Judge Schroeder,
09:56:44 23 and I'll give you that opportunity to answer the question
09:56:47 24 outside the presence of the other panel members.

09:56:49 25 The important thing this morning is that you give

09:56:52 1 full, complete, and truthful answers to any of the
09:56:55 2 questions that are asked. There really are no wrong
09:56:58 3 answers as long as the -- your response is full, complete,
09:57:03 4 and truthful.

09:57:04 5 After that, each side will be allowed to strike a
09:57:08 6 certain number of jurors, and the first eight panel members
09:57:14 7 will become our eight jurors.

09:57:18 8 Once the jury is selected, the attorneys for each
09:57:21 9 side will make opening statements, followed by presentation
09:57:25 10 of evidence.

09:57:26 11 After the evidence has been presented, I will
09:57:29 12 instruct you on the law that you must apply in reaching
09:57:33 13 your decision.

09:57:34 14 After that, the parties will present their closing
09:57:37 15 arguments to you, and then you will retire to the jury room
09:57:41 16 to begin your deliberations.

09:57:43 17 The purpose of voir dire is to enable the Court to
09:57:47 18 determine whether or not any prospective juror should be
09:57:53 19 excused from jury service, either by the Court for what we
09:57:59 20 call cause, or by counsel for the parties by way of what is
09:58:02 21 called peremptory challenges, which are challenges for
09:58:07 22 which no reason need be given.

09:58:09 23 Voir dire is an Old French phrase that means to
09:58:14 24 speak the truth, and I know that you will speak the truth
09:58:16 25 as you answer the questions that I and the parties ask you

09:58:19 1 this morning.

09:58:20 2 As I said, please listen carefully to all of the
09:58:24 3 questions, and don't be timid about speaking up if you
09:58:28 4 think they apply to you.

09:58:29 5 Now, I would like to have everybody give us a
09:58:34 6 little bit of basic information about yourselves.

09:58:38 7 We'll start with -- Ms. Ayers [sic], if you would,
09:58:44 8 come to the microphone, please. And tell us your name,
09:58:54 9 where you live, your city of residence, your occupation,
09:58:58 10 favorite thing to do in your spare time, and if you're
09:59:01 11 married, your spouse's name and occupation.

09:59:05 12 PANEL MEMBER: My name is Colby Ayers. I live in
09:59:08 13 White Oak. I work at Halliburton. I'm a frac hand.

09:59:14 14 THE COURT: Could you come up to the microphone
09:59:15 15 for me a little bit?

09:59:17 16 PANEL MEMBER: Is that okay?

09:59:18 17 THE COURT: What did you say you did for
09:59:20 18 Halliburton?

09:59:21 19 PANEL MEMBER: I'm a frac hand for hydraulic
09:59:23 20 fracturing.

09:59:25 21 THE COURT: Okay. All right. So start over if
10:00:01 22 you would.

10:00:02 23 PANEL MEMBER: My name is Colby Ayers. I live in
10:00:04 24 White Oak. I'm a frac hand for Halliburton. I spend a lot
10:00:09 25 of time away from home. I work long hours. Free time, I

10:00:13 1 just like to relax.

10:00:15 2 THE COURT: Okay.

10:00:15 3 PANEL MEMBER: Spend time with family and friends.

10:00:18 4 THE COURT: Okay. All right. Thank you,

10:00:20 5 Mr. Ayers.

10:00:22 6 Ms. Ray?

10:00:25 7 PANEL MEMBER: My name is Wilma Ray. I reside in

10:00:29 8 Tyler. I am an employee of the Smith County Tax Office

10:00:33 9 where I am a title clerk there. I've worked there for

10:00:36 10 26 years. I am married. I have two sons, six

10:00:40 11 grandchildren, five great-grandchildren. And my hobbies

10:00:44 12 and my free time is gardening and watching movies and

10:00:49 13 reading.

10:00:50 14 THE COURT: All right. Thank you, ma'am.

10:00:52 15 Let's see, Ms. Glezen?

10:00:58 16 PANEL MEMBER: My name is Kelsie Glezen. I reside

10:01:04 17 in Tatum.

10:01:04 18 THE COURT: Could you get a little closer?

10:01:04 19 PANEL MEMBER: My name is Kelsie Glezen. I live

10:01:08 20 in Tatum. And I work for Llama. It's a gas station in

10:01:11 21 Longview. I have no kids. I'm not married. And in my

10:01:14 22 free time, I spend time with my family.

10:01:18 23 THE COURT: All right. Thank you, ma'am.

10:01:22 24 Ms. Stanford?

10:01:25 25 PANEL MEMBER: My name is Debbie Stanford. I'm an

10:01:28 1 activity director. I live in Grand Saline. I've worked in
10:01:33 2 the healthcare field for 35 years. My husband is a miner
10:01:38 3 at Morton Salt Company. And we like to go to the lake and
10:01:41 4 fish a lot whenever we're off.

10:01:43 5 THE COURT: All right. Thank you, ma'am.
10:01:44 6 Ms. Vaughan?

10:01:48 7 PANEL MEMBER: My name is Karen Vaughan. I live
10:01:51 8 in Flint. I work in the financial industry for the last
10:01:56 9 27 years. My husband is retired from the coal industry.
10:02:05 10 Free time is spent with family and friends.

10:02:09 11 THE COURT: Thank you.
10:02:13 12 Mr. Mitchell?

10:02:24 13 PANEL MEMBER: My name is Steve Mitchell. I'm
10:02:27 14 from Henderson. I'm retired. I have a wife. She works
10:02:31 15 for Lowe's. And in my spare time, I piddle around the
10:02:34 16 house.

10:02:35 17 THE COURT: All right. Thank you, Mr. Henderson.
10:02:38 18 Mr. Hailey?

10:02:42 19 PANEL MEMBER: Artie Hailey. Mabank, Texas. I
10:02:46 20 work for the City of Dallas for 28 years, been married 44,
10:02:52 21 got two kids, and I enjoy woodworking.

10:02:58 22 THE COURT: All right. Thank you, sir.
10:03:00 23 Mr. Gross?

10:03:07 24 PANEL MEMBER: Good morning. I'm Freeman Gross,
10:03:09 25 III. I go by Trey. I grew up in Van. I live in Tyler,

10:03:14 1 have for the last 20 years. I'm a senior store manager for
10:03:19 2 Helzberg Diamonds. August will be 33 years with the
10:03:22 3 company. Married for almost 28 years. My wife, Dana,
10:03:27 4 works for Bassett Furniture here in town.

10:03:33 5 THE COURT: Thanks, Mr. Gross.

10:03:39 6 Ms. Willis?

10:03:42 7 PANEL MEMBER: My name is Karen Michelle Willis.
10:03:47 8 I go by Michelle. I'm an administrative assistant for an
10:03:52 9 insurance office. My husband is retired. And in my spare
10:03:56 10 time, I help him rebuild old cars.

10:03:59 11 THE COURT: All right. Thank you, Ms. Willis.

10:04:02 12 Mr. Bostic?

10:04:04 13 PANEL MEMBER: My name is Todd Bostic. I live in
10:04:09 14 Gun Barrel City. I sell health and life insurance. My
10:04:14 15 wife works for an IT health company. In my spare time, I
10:04:20 16 just like spending it with my family.

10:04:22 17 THE COURT: All right. Mr. -- is it Lambeth?

10:04:27 18 PANEL MEMBER: Yes, Your Honor. My name is Jim
10:04:45 19 Lambeth. I'm an attorney with the Linebarger Law Firm here
10:04:48 20 in Tyler, former Assistant DA in Smith County. Married for
10:04:50 21 35 years, three children, three grandchildren -- two
10:04:53 22 adopted actually but still grandchildren. Exchange
10:04:59 23 students. Two of those in Tyler, Texas. Take care of
10:05:04 24 kids, parents, family, a little bit of gardening, a little
10:05:12 25 repairing on the house.

10:05:12 1 THE COURT: I bet you've tried a few cases in your
10:05:14 2 day?

10:05:16 3 PANEL MEMBER: 55.

10:05:16 4 THE COURT: 55.

10:05:17 5 PANEL MEMBER: To jury trial.

10:05:18 6 THE COURT: Thank you, sir.

10:05:20 7 Ms. Lawrence?

10:05:23 8 PANEL MEMBER: My name is Ronda Lawrence. I work
10:05:35 9 for Encore Electric. My husband works for Tyler Car &
10:05:40 10 Truck. And enjoy hanging out with family.

10:05:43 11 THE COURT: Thank you, ma'am.

10:05:55 12 Let's see, Ms. Skoog (pronouncing)?

10:05:55 13 PANEL MEMBER: Skoog.

10:06:00 14 THE COURT: Skoog. Sorry about that.

10:06:00 15 PANEL MEMBER: That's okay. My name is Sandra
10:06:02 16 Skoog. I live in Longview. I'm a retired school
10:06:07 17 counselor. My husband is a chemical engineer for Eastman.
10:06:10 18 And we love to travel. We have one son and daughter-in-law
10:06:13 19 and a grandson.

10:06:14 20 THE COURT: Thank you, ma'am.

10:06:15 21 Ms. Johnson.

10:06:20 22 PANEL MEMBER: My name is Judy Johnson. I live in
10:06:23 23 Quitman, Texas, where I am an 8th grade science teacher. I
10:06:28 24 have four children, three of which are still here. And in
10:06:31 25 my spare time, I chase them around, along with my husband

10:06:36 1 who is a paramedic.

10:06:37 2 THE COURT: Thank you, ma'am.

10:06:38 3 Ms. Rogers?

10:06:45 4 PANEL MEMBER: My name is Joan Rogers. I was born
10:06:49 5 and raised in northwest Kansas, so I'm not a native Texan.
10:06:56 6 I've been living here --

10:06:56 7 THE COURT: But you got here as quickly as you
10:06:59 8 could?

10:06:59 9 PANEL MEMBER: Yeah, just in time for the cold
10:07:01 10 weather that I left when I came to Texas.

10:07:03 11 Anyway, I have been widowed for about three and a
10:07:07 12 half years. I live with my daughter. I'm a regional
10:07:11 13 financial assistant --

10:07:16 14 THE COURT: Did you say for Christus?

10:07:19 15 PANEL MEMBER: Christus. In my spare time, I like
10:07:22 16 to listen to music and in the winter I'm an avid football
10:07:27 17 fan. Go Chiefs.

10:07:28 18 THE COURT: Thank you, Ms. Rogers.

10:07:30 19 Mr. Wilkinson?

10:07:38 20 PANEL MEMBER: My name is Larry Wilkinson. I have
10:07:46 21 three small businesses in the pet care industry. I live in
10:07:47 22 Henderson, Texas. In my spare time, what little I have, I
10:07:52 23 enjoy some cycle riding and spending time with the
10:07:56 24 grandchildren -- two daughters, five grandchildren.
10:07:59 25 Married. My wife works at a -- she's a librarian for a

10:08:04 1 local school district.

10:08:06 2 THE COURT: All right. Thank you, Mr. Wilkinson.
10:08:09 3 Ms. Rodgers?

10:08:10 4 PANEL MEMBER: Good morning. My name is Celsey
10:08:18 5 Rodgers. I have two children, which are in school. And my
10:08:20 6 husband works for Bi-State Energy. I work for Trinity
10:08:25 7 Valley Community College, and I also work for Texas
10:08:29 8 Department of Criminal Justice for offenders and free world
10:08:35 9 college enrollment students. And in my spare time, I spend
10:08:39 10 time with my children and kids.

10:08:41 11 THE COURT: Thank you, ma'am.
10:08:49 12 Mr. Bittick?

10:08:52 13 PANEL MEMBER: Brian Bittick. I'm an insurance
10:08:54 14 agent for 35 years. My wife is a real estate agent for 20.
10:08:58 15 And I live in Kilgore. I spend time with my grandkids and
10:09:02 16 kids when I can and mow the yard too much.

10:09:11 17 THE COURT: All right. Thank you, Mr. Bittick.
10:09:15 18 Ms. Elson?

10:09:16 19 PANEL MEMBER: My name is Hannah Elson. I work
10:09:21 20 for Visiting Angels out of Longview, home health. I have
10:09:26 21 one daughter, and I'm not married.

10:09:28 22 THE COURT: Okay. Thank you, Ms. Elson.
10:09:30 23 Ms. Miller?

10:09:39 24 PANEL MEMBER: My name is Kelly Miller, and I work
10:09:43 25 at Trane. I am married. I have two kids and one grandkid.

10:09:47 1 And all my spare time, we just like to spend time at home
10:09:51 2 and have barbecues.

10:09:55 3 THE COURT: All right. Thank you, Ms. Miller.

10:09:58 4 Mr. Lyle?

10:09:59 5 PANEL MEMBER: Good morning. My name is Lance
10:10:02 6 Lyle. I'm a supervisor for the distribution department for
10:10:07 7 Tyler Pipe. I have been married for seven years. Me and
10:10:11 8 my wife adopted twin baby girls about a year and a half
10:10:16 9 ago, and that's obviously something I like to brag about
10:10:18 10 and talk about in my free time. And I also work out.

10:10:23 11 THE COURT: Well, I have twins, too, Mr. Lyle, and
10:10:26 12 I will tell you, you will survive.

10:10:28 13 PANEL MEMBER: They just started walking.

10:10:30 14 THE COURT: You may not -- oh, well, that's --
10:10:31 15 then your life got a whole lot more complicated.

10:10:35 16 PANEL MEMBER: Everything everybody says is true.

10:10:37 17 THE COURT: It is.

10:10:37 18 PANEL MEMBER: Yes, sir.

10:10:38 19 THE COURT: You have to go to a zone defense. No
10:10:42 20 more man-to-man defense.

10:10:44 21 PANEL MEMBER: It takes a team for sure.

10:10:46 22 THE COURT: It does. Good luck with that.

10:10:49 23 Let's see. Ms. Assenheimer?

10:10:56 24 PANEL MEMBER: My name is Devin Assenheimer. I'm
10:11:01 25 a nurse. And my fiance is a forester. And in my free time

10:11:09 1 I like to fish and hike or do anything that's outdoors.

10:11:13 2 THE COURT: Okay. Thank you.

10:11:24 3 Let's see, Ms. Decco?

10:11:27 4 PANEL MEMBER: My name is Tanya Decco. I work
10:11:33 5 for -- I'm a cashier at Super 1 Foods in Longview, Texas.
10:11:40 6 My mother has COPD. It's getting severe. I'm taking care
10:11:45 7 of her. And my husband -- I am married for eight years.
10:11:48 8 My husband is disabled. He had -- he has personal reasons
10:11:55 9 why he's on disability. If you need to know, I'll be glad
10:12:00 10 to share.

10:12:02 11 THE COURT: That's okay.

10:12:03 12 PANEL MEMBER: I have one stepdaughter and a
10:12:06 13 grand -- grand-baby by her. I have a son that's in the
10:12:11 14 Navy, active. And I have a 12-year old that I'm also
10:12:19 15 taking care of.

10:12:21 16 THE COURT: Yes, ma'am.

10:12:22 17 PANEL MEMBER: I thought that we're supposed to
10:12:25 18 tell you the reason why --

10:12:27 19 THE COURT: Well, at the very end we'll discuss
10:12:30 20 about what would make this week a difficult week for you to
10:12:37 21 serve as a juror. Sounds like you've got your plate full
10:12:41 22 as it is.

10:12:42 23 PANEL MEMBER: I really do.

10:12:43 24 THE COURT: I understand. We'll get through the
10:12:45 25 voir dire process, and the attorneys may have some

10:12:48 1 questions for you, but we'll address what we call hardship
10:12:51 2 things at the very end. But I appreciate your comments,
10:12:55 3 Ms. Decco.

10:12:57 4 PANEL MEMBER: Okay. For my spare time, I just
10:12:59 5 like taking care of my child and everybody else -- pretty
10:13:04 6 much everybody else.

10:13:04 7 THE COURT: Doesn't sound like you have much spare
10:13:09 8 time.

10:13:09 9 PANEL MEMBER: I don't.

10:13:11 10 THE COURT: All right. Thank you, ma'am.

10:13:11 11 PANEL MEMBER: Thank you.

10:13:12 12 THE COURT: Ms. Morrow?

10:13:23 13 PANEL MEMBER: My name is Sheila Morrow. I'm a
10:13:27 14 widow. I live in Chapel Hill. I have two kids. Music.

10:13:40 15 THE COURT: Okay. Thank you, ma'am.

10:13:43 16 Okay. I'm now going to ask counsel for the
10:13:47 17 Plaintiff to introduce himself and his client, as well as
10:13:52 18 members of their team who will be presenting this case, as
10:13:58 19 well as any witnesses who will testify during the
10:14:00 20 Plaintiff's presentation of its case-in-chief.

10:14:04 21 As he comes forward to speak to you, I'm going to
10:14:10 22 ask the panel to have a few questions in mind for the
10:14:13 23 people who are introduced and identified. Do you know the
10:14:19 24 people who are introduced or identified? Are you related
10:14:25 25 to them? Do you have any kind of connection to them at

10:14:30 1 all, a social connection, a business connection, through
10:14:37 2 church or the community or something like that? Have you
10:14:39 3 had any kind of business dealings with them?

10:14:42 4 With respect to the attorneys, were you ever
10:14:45 5 represented by them or by members of their law firm?
10:14:49 6 Really, just any kind of knowledge about or familiarity
10:14:52 7 with any of the people who are either introduced here in
10:14:55 8 the courtroom or identified.

10:14:57 9 Mr. Bennett?

10:15:00 10 MR. BENNETT: Thank you, Your Honor. Joshua
10:15:03 11 J. Bennett here on behalf of Lone Star Technological
10:15:06 12 Innovations, LLC.

10:15:06 13 THE COURT: Mr. Bennett, if you would go to the
10:15:09 14 podium.

10:15:10 15 MR. BENNETT: Yes, Your Honor. Here with us is
10:15:13 16 Jesse Rice on behalf of Lone Star. My co-counsel is John
10:15:21 17 Saba. And Jason Bloom is here with us, as well. We have
10:15:25 18 other lawyers who may help us out who couldn't fit into the
10:15:28 19 room. But Monica Little and Brad Liddle who work with me in
10:15:33 20 my office. And then John Lee who is a lawyer out of
10:15:38 21 California. So that's my legal team and our client.

10:15:40 22 Our witnesses will be -- our first witness will be
10:15:43 23 Mr. Rice, and then we'll call on other witnesses -- a
10:15:46 24 couple of experts. One will be Dr. Al Ducharme, as well as
10:15:52 25 Glenn Perdue. So those will be our witnesses. There will

10:15:56 1 be witnesses called, as well, from the other side, so those
10:16:00 2 are our witnesses and parties, Your Honor.

10:16:05 3 THE COURT: Thank you, Mr. Bennett.

10:16:06 4 Okay. So, ladies and gentlemen of the panel, of
10:16:09 5 the people introduced by Mr. Bennett or identified as
10:16:12 6 potential witnesses in the case, do any of you know any of
10:16:16 7 them, any -- any relationship with them? With respect to
10:16:20 8 the attorneys, have you ever been represented by them or by
10:16:23 9 members of their firm? Are you related to anybody, know
10:16:28 10 them in any way, go to church with anyone?

10:16:33 11 I take it by your silence, no one is familiar with
10:16:36 12 any of those folks. Okay. All right.

10:16:39 13 Very well. Let me ask Mr. Joshi to come forward
10:16:43 14 at this time.

10:16:45 15 Oh, I'm sorry. Mr. Oliver, you're selecting the
10:16:48 16 jury.

10:16:50 17 Mr. Oliver, if you would, please go to the podium,
10:16:52 18 and we'll do the same thing with respect to the Defendants.

10:16:55 19 And, ladies and gentlemen, I'll ask you to have
10:16:57 20 the same questions in mind for the people introduced by
10:17:01 21 Mr. Oliver and identified by him as witnesses in the case.

10:17:08 22 MR. OLIVER: Thank you, Your Honor.

10:17:09 23 Good morning. I think it's still morning. My
10:17:11 24 name is Andrew Oliver. I'm a lawyer for ASUSTeK. I'll
10:17:16 25 probably refer to them as ASUS during the course of the

10:17:19 1 trial.

10:17:20 2 I am in Tyler from time to time but haven't been
10:17:24 3 here since before COVID. So if you saw me before and knew
10:17:28 4 me from before, then you would have seen me with a
10:17:31 5 respectable hair cut, not a long haircut that my pastor
10:17:35 6 almost didn't recognize me in.

10:17:37 7 My co-counsel is Vinay Joshi. We worked together
10:17:41 8 as lawyers for about twenty -- we started working together
10:17:44 9 about 20 years ago.

10:17:46 10 Mr. Michael McCarady is going to be the corporate
10:17:52 11 representative for ASUS. He is from Dallas, lived in
10:17:56 12 Dallas long-term. ASUS tried to send him out of Texas, and
10:18:00 13 he refused. But Mr. McCarty represents -- works in
10:18:06 14 customer service and has teams that all over South America
10:18:10 15 and Central America and some of the United States that he
10:18:14 16 supervises for ASUS.

10:18:15 17 We're going to have a few witnesses that are not
10:18:18 18 here today. Jaime or Jaime Morquecho. He is from
10:18:22 19 California, works for ASUS.

10:18:25 20 Mr. Alvin Lin will be a witness. He is from
10:18:31 21 Taiwan. It's probably unlikely you have met him, but I
10:18:34 22 wanted to give his name just in case.

10:18:42 23 Dr. Robert Stevenson, you may have seen him
10:18:47 24 briefly walk in. He is a professor at the University of
10:18:47 25 Notre Dame. He'll be testifying.

10:18:55 1 And also Brett Reed, who you may have seen walk in
10:18:55 2 earlier -- and they both left when they were asked to
10:19:00 3 leave -- is a witness from a company called Competition
10:19:00 4 Economics.

10:19:01 5 We won't have any other lawyers coming into the
10:19:04 6 courtroom, and those are all the witnesses and the
10:19:06 7 corporate representative.

10:19:09 8 THE COURT: Thank you, Mr. Oliver.

10:19:11 9 So, ladies and gentlemen, of the people who were
10:19:16 10 introduced or identified by Mr. Oliver as either attorneys
10:19:20 11 working in the case or witnesses in the matter, do any of
10:19:26 12 you know any of them, familiar with them at all, or related
10:19:30 13 to them at all, go the church with them? Anyone have any
10:19:35 14 familiarity at all with any of the people identified or
10:19:38 15 introduced by Mr. Oliver?

10:19:40 16 Okay. I take it by your silence, you do not.

10:19:43 17 Now, my next question relates to prior jury
10:19:51 18 service you all have -- may have had. And so I'm looking
10:19:53 19 for a number of categories. It can be any kind of a case,
10:19:57 20 a criminal case or a civil case, or a -- were you've served
10:20:00 21 as members of a jury or a grand jury, either in state court
10:20:05 22 or federal court. I just need to know generally what kind
10:20:08 23 of case it was, where it was, and whether the jury reached
10:20:11 24 a verdict.

10:20:13 25 So anybody on the left side of the room already

10:20:16 1 served on a jury?

10:20:18 2 All right. Let's just take it row by row.

10:20:21 3 We'll start with you, Ms. Vaughan.

10:20:25 4 Ms. Vaughan, would you come forward, please.

10:20:29 5 PANEL MEMBER: Previously, I've served on two
10:20:33 6 juries. One was an assault case, and one was a shoplifting
10:20:37 7 case.

10:20:38 8 THE COURT: Were both of those in Smith County?

10:20:40 9 PANEL MEMBER: They were.

10:20:41 10 THE COURT: And did a jury reach a verdict in both
10:20:44 11 cases?

10:20:47 12 PANEL MEMBER: Yes.

10:20:47 13 THE COURT: Okay. Thank you, ma'am.

10:20:48 14 All right. Who else?

10:20:52 15 Let's see. Yes, sir. Mr. Hailey? If you'll just
10:20:54 16 come forward.

10:20:54 17 PANEL MEMBER: I was on two trials. Both civil.

10:20:58 18 THE COURT: And whereabouts was that?

10:20:59 19 PANEL MEMBER: One was in Dallas back in the '70s,
10:21:02 20 and one was in Van Zandt County about two years ago.

10:21:07 21 THE COURT: All right. Did you reach a verdict
10:21:10 22 both times?

10:21:12 23 PANEL MEMBER: Yes, sir.

10:21:12 24 THE COURT: Okay. Thank you, Mr. Hailey.

10:21:15 25 Who else in the first -- Mr. Mitchell?

10:21:27 1 PANEL MEMBER: I served on -- I served on one in
10:21:31 2 Henderson -- Rusk County. It was a sexual case, and we
10:21:32 3 found him not guilty.

10:21:34 4 THE COURT: Okay. Thank you, sir.

10:21:42 5 Mr. Bostic?

10:21:44 6 PANEL MEMBER: I served on one, and it was a
10:21:47 7 statutory rape case, and it was -- he was found guilty.

10:21:51 8 THE COURT: Okay. Thank you, sir.

10:21:53 9 Mr. Lambeth, did you raise your hand?

10:21:57 10 PANEL MEMBER: Yes. Yes, Your Honor.

10:22:04 11 I served on a civil case that was a contract
10:22:09 12 dispute case out of Kaufman County.

10:22:12 13 THE COURT: And where was it?

10:22:13 14 PANEL MEMBER: Kaufman County --

10:22:13 15 THE COURT: Kaufman.

10:22:13 16 PANEL MEMBER: -- where I formerly lived.

10:22:17 17 THE COURT: Oh, okay. All right. Reach a verdict
10:22:17 18 in that case?

10:22:19 19 PANEL MEMBER: Yes, Your Honor, we did.

10:22:21 20 THE COURT: Okay. Thank you, sir.

10:22:21 21 Let's -- right side of the room. Ms. Skoog?

10:22:28 22 PANEL MEMBER: I previously served in a civil
10:22:30 23 trial in Gregg County, personal injury, and it was probably
10:22:34 24 about 30 years ago.

10:22:36 25 THE COURT: Reach a verdict?

10:22:36 1 PANEL MEMBER: Yes, we did.

10:22:38 2 THE COURT: Okay. Who else?

10:22:40 3 Let's see, Ms. Rodgers?

10:22:43 4 PANEL MEMBER: I served on a trial, DWI, in
10:22:46 5 Anderson County.

10:22:47 6 THE COURT: Reach a verdict?

10:22:49 7 PANEL MEMBER: Yes.

10:22:49 8 THE COURT: Thank you, ma'am.

10:22:57 9 Who else on the right side of the room? Anybody
10:22:59 10 else? Nobody else?

10:23:01 11 Okay. All right. My next question relates to any
10:23:05 12 previous involvement that you may have had, a family member
10:23:09 13 might have had, or a close, personal friend might have had
10:23:12 14 in some sort of a legal proceeding. And -- so it can be
10:23:16 15 any court, it can be a criminal matter, it can be a civil
10:23:20 16 matter that concerned yourself, a member of your family, or
10:23:24 17 close personal friend, and the categories are Plaintiff,
10:23:30 18 Defendant, witness, or victim.

10:23:33 19 And I don't need to know a lot of details or you
10:23:35 20 know, exactly what happened. If you'd just generally tell
10:23:39 21 me what kind of case it was and sort of which categories
10:23:44 22 you would fall in, in that regard.

10:23:47 23 All right. Left side of the room. Anybody?

10:23:50 24 Ms. Vaughan, if you would.

10:23:57 25 PANEL MEMBER: It was a child custody case for my

10:24:00 1 grandchildren.

10:24:00 2 THE COURT: Okay. Thank you, ma'am.

10:24:11 3 Who else on the left side of the room? Anyone

10:24:13 4 else on the left side of the room?

10:24:15 5 Right side of the room?

10:24:18 6 Yes, ma'am. Ms. Johnson?

10:24:19 7 PANEL MEMBER: I was a Plaintiff in a medical

10:24:20 8 malpractice suit for my mother's death.

10:24:24 9 THE COURT: Okay. Thank you, ma'am.

10:24:34 10 Mr. Wilkinson?

10:24:34 11 PANEL MEMBER: I had a case on an adoption in Rusk

10:24:38 12 County for my daughter.

10:24:39 13 THE COURT: Where you -- when you were adopting

10:24:41 14 her?

10:24:41 15 PANEL MEMBER: Yes.

10:24:42 16 THE COURT: Okay. Thank you, Mr. Wilkinson.

10:24:46 17 Who else on the right side of the room?

10:24:50 18 Ms. Miller?

10:24:58 19 PANEL MEMBER: For my son. He had got in trouble

10:25:01 20 with -- got caught with some marijuana, so...

10:25:05 21 THE COURT: Okay. All right. Thank you, ma'am.

10:25:06 22 Who else on the right side of the room?

10:25:08 23 Yes, sir. Mr. Bostic?

10:25:12 24 PANEL MEMBER: I don't know if this counts. My

10:25:14 25 wife and I had to go to court over the adoption of my son.

10:25:18 1 THE COURT: That's fine. That's fine. Thank you
10:25:20 2 for telling me that.

10:25:21 3 One more.

10:25:22 4 Ms. Rodgers?

10:25:26 5 PANEL MEMBER: This is very difficult for me to
10:25:28 6 even say. I'm not sure if it's going to be a case or -- or
10:25:32 7 a case.

10:25:33 8 THE COURT: Yes, ma'am.

10:25:34 9 PANEL MEMBER: My brother was murdered a month
10:25:36 10 ago.

10:25:36 11 THE COURT: Oh, ma'am, I'm so sorry.

10:25:38 12 PANEL MEMBER: So I'm not sure if there will be
10:25:41 13 justice or not.

10:25:42 14 THE COURT: Okay. Okay. All right. Thank you
10:25:44 15 for telling me that, Ms. Rodgers.

10:25:48 16 PANEL MEMBER: I have a family member -- sorry --
10:25:50 17 that was involved with a drug case.

10:25:51 18 THE COURT: All right. Thank you, ma'am.

10:25:54 19 Anyone else?

10:25:57 20 So let me just -- of those who came forward and
10:26:01 21 told us a little bit about your involvement with the
10:26:05 22 judicial system prior to today, is there anything about
10:26:09 23 anyone's experience that you think would make it difficult
10:26:14 24 for you to serve as a juror in this case and be fair and
10:26:19 25 impartial to both sides?

10:26:21 1 Is there anything about your experience with
10:26:24 2 the -- our justice system in light of that experience that
10:26:31 3 would -- that would sort of start you out, before you know
10:26:36 4 anything about the facts of this case, leaning one side or
10:26:40 5 the other? Anybody think they would have any trouble
10:26:44 6 setting any previous experience aside?

10:26:47 7 I take it by your silence you would not.

10:26:50 8 All right. My next question is this: Will you,
10:26:55 9 if you are selected to be a member of this jury, be able to
10:27:00 10 render a verdict that is solely based on the evidence that
10:27:04 11 is presented at trial and in the context of the law as I
10:27:09 12 give it to you in my instructions, disregarding any other
10:27:14 13 ideas or notions or beliefs about the law that you may have
10:27:20 14 encountered in reaching your verdict?

10:27:26 15 Does anyone think they would have any trouble
10:27:28 16 doing that? I take it by your silence you would not.

10:27:31 17 If you're selected as a juror in this case, one of
10:27:36 18 the rules that I will tell you about is that you can't talk
10:27:39 19 about the case with anyone until all of the evidence has
10:27:43 20 been presented and you have been instructed on the law.
10:27:46 21 That means you can't talk to your family members in the
10:27:50 22 evenings about it, you can't talk to your fellow jurors
10:27:54 23 during the course of the trial, until at the very end and I
10:27:57 24 tell you, you can begin your deliberations at that point.

10:28:02 25 So that means you -- you can't communicate with

10:28:05 1 anyone in any way, whether in writing or email or text
10:28:09 2 messaging or commenting or blogging on any social media
10:28:18 3 site like Twitter or Facebook or Instagram or any of those.
10:28:26 4 And if you feel like you would have trouble doing that,
10:28:30 5 then you can't let yourself become a member of the jury in
10:28:33 6 this case.

10:28:34 7 Is there anyone here today who would not be able
10:28:37 8 to comply with that restriction?

10:28:40 9 Okay. I take it by your silence you all could.

10:28:43 10 I will also instruct you that you cannot conduct
10:28:47 11 any type of independent or personal research or
10:28:51 12 investigation regarding any of the matters involved in this
10:28:54 13 case. So you can't use your cellphone or a tablet or a
10:29:01 14 computer or any kind of device to do any kind of research
10:29:05 15 or investigation regarding the case, the matters in the
10:29:07 16 case, the legal issues, the parties involved, or the
10:29:10 17 attorneys involved.

10:29:11 18 So in the evenings, you can't go home and, you
10:29:15 19 know, Google the parties' names or the attorneys' names or
10:29:22 20 try to find out anything about the case.

10:29:24 21 Likewise, if you happen inadvertently to come
10:29:28 22 across any type of information, you must ignore that
10:29:33 23 information. I doubt there will be anything in the
10:29:36 24 newspapers about this case or on television or the radio,
10:29:41 25 but if there is, I would ask that you just ignore that, and

10:29:45 1 don't read the article or change the -- change the channel.

10:29:52 2 Having said that, if you feel you cannot follow my
10:29:56 3 instructions in that regard, again, you can't let yourself
10:29:59 4 become a member of the jury.

10:30:01 5 Is there anyone here who feels like they could not
10:30:05 6 comply with my instructions in that regard?

10:30:08 7 All right. I take it by your silence, you could
10:30:11 8 all follow the rules on that.

10:30:14 9 Is there any other reason that you could think
10:30:17 10 about that you could not sit on the jury in this case and
10:30:21 11 render a verdict, a fair verdict based upon the evidence
10:30:27 12 that's presented to you and in the context of the
10:30:30 13 instructions I give you about the law that you are to
10:30:35 14 apply? Is there anyone who would not be able to do that?

10:30:45 15 All right. I want to say a couple more things
10:30:48 16 before I turn the questioning over to the parties.

10:30:53 17 The jurors who are selected will actually serve in
10:30:56 18 the role of judges of the facts and will make the sole
10:31:00 19 determination about what the facts are in the case.

10:31:06 20 My job as the Judge is to rule on questions of
10:31:09 21 law, evidence, and procedure, and to control the courtroom
10:31:11 22 and the flow of the trial.

10:31:13 23 I want to say a couple of things about our
10:31:16 24 judicial system that will hopefully put things in proper
10:31:21 25 perspective. Our judicial system is an adversary system.

10:31:30 1 That means that during the trial, each side and their
10:31:33 2 lawyers are going to try to present their respective cases
10:31:36 3 to the jury in the very best light possible.

10:31:38 4 And with regard to the lawyers, they, I know --
10:31:41 5 not these particularly but larger -- lawyers as a whole
10:31:46 6 sometimes are criticized by the public and the media, and I
10:31:50 7 think this often results from a basic misunderstanding of
10:31:54 8 our adversary system in which lawyers are required to act
10:32:02 9 as advocates for competing parties and are ethically and
10:32:06 10 legally obligated to zealously assert his or her client's
10:32:11 11 position under the rules of our system.

10:32:13 12 By presenting the very best case possible, I think
10:32:18 13 that attorneys assist the jurors in better weighing the
10:32:24 14 relevant evidence in order for the jury to determine the
10:32:27 15 truth and to arrive at a just verdict based on the
10:32:37 16 evidence.

10:32:37 17 This is a system of justice that has served our
10:32:41 18 nation well for more than 200 years. And our lawyers --
10:32:44 19 America's lawyers have been and continue to be a critical
10:32:47 20 part of that process.

10:32:47 21 So as the trial goes forward, I may frown at these
10:32:53 22 attorneys from time to time, I may growl at them from time
10:32:56 23 to time, but it's just because I'm trying to make sure they
10:32:59 24 don't get outside the boundaries of our adversary system
10:33:03 25 and our rules of procedure. But I would ask that you keep

10:33:06 1 in mind that they're just doing their jobs, and I think
10:33:08 2 it's all important for us -- all of you to be aware that
10:33:12 3 that's the case as we go forward.

10:33:13 4 The parties will now have an opportunity to ask
10:33:16 5 some questions of you. Again, there are no wrong answers.
10:33:23 6 As long as your answer is a truthful response to the
10:33:26 7 question that's asked, that's the right answer.

10:33:29 8 The lawyers and their clients are entitled to the
10:33:32 9 information to be gained through these questions, and they
10:33:34 10 are not here to unduly pry into your private affairs but to
10:33:40 11 gather information for the purpose of selecting a fair and
10:33:43 12 impartial jury.

10:33:48 13 Now, if I don't think they're entitled to ask a
10:33:51 14 question, I'll certainly let them know that, but these
10:33:54 15 attorneys are familiar with the rules of our court and I
10:33:57 16 know they will follow those.

10:33:58 17 Again, if any of you have any serious hesitancy at
10:34:03 18 all about answering a question in front of the entire
10:34:05 19 panel, just let me know that, and we can deal with that at
10:34:09 20 the very end.

10:34:10 21 I will now allow counsel for the Plaintiff to voir
10:34:16 22 dire the jury.

10:34:16 23 MR. BENNETT: Thank you, Your Honor. May I have a
10:34:18 24 five-minute warning, please, Your Honor?

10:34:20 25 THE COURT: Yes.

10:34:21 1 MR. BENNETT: Thank you.

10:34:25 2 Ladies and gentlemen of the jury panel, I'll echo
10:34:27 3 the Judge's appreciation. We appreciate you taking time
10:34:31 4 out of your lives to do your civic duty.

10:34:35 5 Y'all shared information about yourselves. I
10:34:37 6 think it's only fair I do the same. I have been married
10:34:42 7 21 years. I have four kids. And if Judge and Mr. Lyle
10:34:46 8 permit me, I'll join the twins club. The last two I had
10:34:50 9 were twins. We had my oldest daughter, my boy, and then
10:34:55 10 twins. It was a surprise, so we quit at four before we had
10:35:00 11 quadruplets. We stay busy. When I'm not at work, I'm at
10:35:04 12 home having fun with my family. We like to hit national
10:35:07 13 parks when we can. We've hit a few of those. We've spent
10:35:08 14 time in the Ozarks. That's what we like to do.

10:35:13 15 So in a prior life, I was a school teacher, and I
10:35:17 16 taught down in McAllen, Texas. I coached some sports,
10:35:20 17 helped them start their first wrestling team. Taught
10:35:23 18 government, and that's actually what got me kind of
10:35:25 19 thinking about law. I taught basically constitutional law
10:35:29 20 to high school seniors, and I made the decision and it's
10:35:32 21 been a good decision.

10:35:33 22 But teaching is a little bit what we're talking
10:35:35 23 about today. We call it patents, but that's what patents
10:35:39 24 do, they teach. They teach an idea to the public. And
10:35:41 25 that's what we're here to talk about, an idea, an

10:35:43 1 innovation that Lone Star owns that it's seeking to protect
10:35:46 2 the unauthorized use from another company, and that's ASUS.

10:35:52 3 It's sort of like a rental property. We open it
10:35:56 4 up to the public. If they want to come and use it, they
10:35:59 5 have to pay for that use. Those who take it and don't pay,
10:36:03 6 we have rights to assert. That's what we're here to do is
10:36:05 7 assert those rights and protect it.

10:36:08 8 I've got the patent here. It's not terribly long
10:36:11 9 for a patent. I won't be able to do it justice in the time
10:36:17 10 I have. I don't have a lot of time. I need to ask some
10:36:20 11 questions. But a high level summary of the patent is it's
10:36:23 12 a method -- you'll hear more about this -- for displaying
10:36:28 13 real-time video images on a monitor and a way to enhance
10:36:31 14 and control color use on that monitor, and a change of
10:36:37 15 color and only that one color as desired by the user. And
10:36:40 16 we'll show later in the trial that that innovation has some
10:36:43 17 value.

10:36:43 18 Now, of course, ASUS -- they deny all that, that
10:36:46 19 they infringe on our rights, that they're using -- we call
10:36:50 20 it infringement. It's -- trespassing is another way of
10:36:52 21 thinking about that, that they trespass on our rights.
10:36:55 22 They say they don't.

10:36:56 23 They'll also say that we've overstated what we
10:37:00 24 think the worth of that invention is. They think it's
10:37:03 25 pennies on the dollar at best, and we say it's worth a lot

10:37:06 1 more than that, 57 cents or so. Multiplied over hundreds,
10:37:11 2 maybe thousands of devices, that's gets to be a big
10:37:14 3 difference. And that's part of our dispute. We're far
10:37:18 4 apart -- really why we're here, why we need you to help us
10:37:21 5 resolve that dispute.

10:37:23 6 In fact, we really can't do that without you.
10:37:24 7 This is the last refuge we have to resolve that dispute and
10:37:31 8 stick up for our property.

10:37:33 9 So with that background of the case, picking a
10:37:37 10 jury is sort of how I took my ACTs, SATs when I was going
10:37:42 11 to college. It's sort of you pick what you think works and
10:37:44 12 you eliminate the rest, right? It's best guess. So that's
10:37:47 13 really what this is about. We're asking questions to find
10:37:48 14 out fairness. The Judge touched on that earlier, right?
10:37:51 15 All of us are a product of our life experiences, and all of
10:37:54 16 those life experiences influence how we lean, one way or
10:37:57 17 the other. The Judge mentioned that earlier.

10:37:59 18 So, for example, having been a teacher, if this
10:38:02 19 were a case about a teacher maybe giving a little too much
10:38:07 20 discipline, having spent some time in the classroom, I
10:38:09 21 might lean towards that teacher's side because I empathize
10:38:13 22 a little bit. That's okay to lean. Lean doesn't
10:38:15 23 disqualify you. What's wrong is if you lean, and you don't
10:38:19 24 tell us. That's what we're here to find out, which way do
10:38:19 25 you lean?

10:38:24 1 So my questions, if I ask them, I'm not picking on
10:38:26 2 you. If you need a private answer, like the Judge said, we
10:38:30 3 can wait until the end. You can tell me that, and we'll
10:38:32 4 hold it until the end. But fairness to both sides is what
10:38:36 5 we're after here. And so let's just talk about which way
10:38:38 6 you lean on some issues.

10:38:38 7 So let's start with just the obvious one,
10:38:41 8 lawsuits. How many folks think there's just too many
10:38:46 9 lawsuits? Anyone out there?

10:38:50 10 PANEL MEMBER: Too many lawsuits?

10:38:52 11 MR. BENNETT: Too many lawsuits, yes. All right.
10:38:55 12 Hands up -- hands up high.

10:38:57 13 Mr. Ayers, tell me about that. Why do you think
10:39:00 14 there's too many lawsuits.

10:39:02 15 THE COURT: Mr. Ayers, could you come to the
10:39:05 16 microphone?

10:39:07 17 PANEL MEMBER: There's enough stuff that people
10:39:11 18 argue about. I feel like it comes down to whose ego is
10:39:16 19 bigger than whose, and nobody wants to tuck tail and admit
10:39:20 20 a wrongdoing at a time when we're all adults. You
10:39:23 21 understand someone did something wrong, and it's just -- no
10:39:28 22 one want to feel inferior, I feel like, in life. It's
10:39:33 23 just -- egos get in the way, and everybody wants to cause
10:39:35 24 an argument and just -- it just happens too much.

10:39:40 25 MR. BENNETT: Okay. Thank you, Mr. Ayers.

10:39:43 1 Appreciate that. Anyone feel like Mr. Ayers, too many
10:39:46 2 lawsuits?

10:39:46 3 Ms. Skoog?

10:39:48 4 PANEL MEMBER: Well, I just think there are too
10:39:53 5 many. I think they're filed frivolously many times, but I
10:39:57 6 also realize that sometimes it's the only way matters get
10:40:00 7 resolved.

10:40:00 8 MR. BENNETT: Okay. And so --

10:40:01 9 PANEL MEMBER: It's a question of number.

10:40:02 10 MR. BENNETT: Right. There may be a lot, but each
10:40:05 11 case can be decided on its own merits?

10:40:09 12 PANEL MEMBER: Right.

10:40:10 13 MR. BENNETT: And some of them have merit and some
10:40:12 14 don't?

10:40:12 15 PANEL MEMBER: Right.

10:40:13 16 MR. BENNETT: Thank you, Ms. Skoog. Anyone else?
10:40:16 17 Too many lawsuits?

10:40:19 18 Ms. Morrow?

10:40:30 19 PANEL MEMBER: I just think there's too many --

10:40:30 20 MR. BENNETT: Is it --

10:40:33 21 PANEL MEMBER: Like McDonald's.

10:40:33 22 MR. BENNETT: Okay. Do you feel, though, like --
10:40:37 23 like Ms. Skoog, that sometimes there may be too many but
10:40:39 24 there's good ones and there's bad ones and that if -- you
10:40:43 25 could weigh the evidence fairly on a good one?

10:40:46 1 PANEL MEMBER: Yeah.

10:40:47 2 MR. BENNETT: Okay. Let me ask this question.

10:40:49 3 When you got a dispute like this -- please feel free to
10:40:52 4 take your seat, Ms. Morrow. Thank you.

10:40:55 5 When you have a dispute, you really have two
10:40:57 6 choices. You can do nothing, right, and let it go? And
10:41:00 7 some people feel that way, morally that they just should
10:41:04 8 let it go, or you can stick up for yourself and stick up
10:41:08 9 for your rights.

10:41:11 10 Anyone feel like the first way, if you have a
10:41:13 11 right, even if it's trespassed, just -- you feel like that
10:41:16 12 it's wrong to file a lawsuit, you shouldn't file one to
10:41:19 13 enforce your rights? Even if it's a small -- what if it's
10:41:22 14 a really small right, maybe a tiny piece of property,
10:41:27 15 anybody feel that way, you should just let it go? No
10:41:31 16 hands? Okay.

10:41:32 17 How about anyone involved with any associations,
10:41:42 18 East Texans Against Lawsuits, anything like that? Any
10:41:44 19 hands? Anyone a part of that? Okay.

10:41:47 20 Anyone been a witness in a case? Anybody ever
10:41:50 21 been a witness in a court case? Okay. Seeing no hands --
10:41:58 22 oh, sorry. Yes?

10:42:02 23 PANEL MEMBER: Again, I was just a witness in a
10:42:04 24 medical malpractice suit with my mom.

10:42:08 25 MR. BENNETT: Okay.

10:42:09 1 PANEL MEMBER: Just a witness, so...

10:42:10 2 MR. BENNETT: All right. And any experience there
10:42:13 3 make you feel one way or the other about the -- leaning one
10:42:15 4 way or the other toward Plaintiff or Defendant?

10:42:17 5 PANEL MEMBER: No, sir.

10:42:18 6 MR. BENNETT: Okay. Thank you.

10:42:22 7 Now, I want to talk about Lone Star's business
10:42:25 8 model, all right? It's going to come up in the case. We
10:42:28 9 own patents. In this particular one, there's one patent.
10:42:32 10 We'll call it the '435 patent. That's how you heard it
10:42:35 11 referred to during the lawsuit. And when folks infringe on
10:42:38 12 the patent, we sue them because that's what the law permits
10:42:42 13 us to do, to enforce that right, to ensure that that right
10:42:46 14 is maintained. And we -- we sue, we collect settlements.
10:42:50 15 We also call those licenses. There's a license right that
10:42:53 16 goes with the patent.

10:42:55 17 So anyone have a problem with that business model?
10:42:57 18 That just sounds strange to you? You don't like it?

10:43:02 19 Ms. Ray, what do you think about that business
10:43:05 20 model? Can you come to the mic, ma'am? Thank you.

10:43:12 21 PANEL MEMBER: I think it's fine. I have no
10:43:14 22 problem with it. If something is going wrong and you think
10:43:20 23 you -- a right or somebody is infringing on your behalf or
10:43:25 24 patent or whatever, they have a right to stick up for it.

10:43:29 25 MR. BENNETT: Mr. Lambeth, back in the corner

10:43:32 1 there. Sorry to pick on you all the way back there, but
10:43:35 2 what do you think about that, what Ms. Ray said?

10:43:43 3 PANEL MEMBER: I have to plead ignorance. I don't
10:43:46 4 understand it. I'm interested in hearing more about it. I
10:43:49 5 don't really know.

10:43:50 6 MR. BENNETT: All right. Anyone feel like
10:43:52 7 Mr. Lambeth? Not heard much about it? Don't know much
10:43:57 8 about it? Hands up high. Okay. Most of you.

10:44:00 9 How about anyone here who's sued a company before,
10:44:07 10 other than Ms. Johnson? Anyone here filed a lawsuit
10:44:15 11 against a company?

10:44:16 12 Mr. Lambeth, I think we understand now you've --
10:44:19 13 you don't have to come all the way up. As a lawyer, you've
10:44:22 14 had a few trials. We heard about that. Thank you.

10:44:24 15 How about in terms of the amount of money asked?
10:44:32 16 You're going to hear later, there's a few million involved
10:44:38 17 in our demand. Anyone think that's just -- as a
10:44:41 18 categorical matter, just can't award that much in damages?
10:44:45 19 It's just too much for any lawsuit? Anyone feel that way?
10:44:49 20 No? Seeing no hands.

10:44:50 21 How about a property owner or an athlete who tries
10:44:54 22 to get top dollar for what they do, for their invention,
10:44:58 23 for their property, for what they contribute? Anyone have
10:45:01 24 a problem with that, an athlete who holds out, not showing
10:45:05 25 up until you give me my -- my big money contract? Anyone?

10:45:09 1 Tell me about that. Why, Ms. Stanford, please?

10:45:15 2 PANEL MEMBER: Just a personal belief as far as
10:45:17 3 the athletes go and the money that they get and they have
10:45:21 4 to have, and we have starving children on the street.

10:45:21 5 MR. BENNETT: Okay.

10:45:24 6 PANEL MEMBER: It's a personal thing.

10:45:25 7 MR. BENNETT: Thank you, Ms. Stanford.

10:45:29 8 Mr. Bostic, please?

10:45:34 9 PANEL MEMBER: I sometimes feel like athletes
10:45:37 10 on -- are not -- whenever they get their contract, they
10:45:44 11 kind of go backwards, if that makes sense. But in this
10:45:51 12 situation, I would have to hear more before I made my
10:45:56 13 decision. So a contract versus an athlete are two
10:46:00 14 different situations.

10:46:01 15 MR. BENNETT: Okay. Thank you, Mr. Bostic.

10:46:04 16 Appreciate you.

10:46:04 17 How about stock market, right? The idea behind
10:46:09 18 the stock market is you buy a stock at a certain price, you
10:46:14 19 hope it's low, and you hope to sell high.

10:46:16 20 Anyone find any problems? You don't like the
10:46:18 21 stock market? Maybe it's a little too much like gambling?
10:46:23 22 You don't favor it? You don't like to use it? Don't like
10:46:26 23 it when others do it?

10:46:27 24 No? Okay.

10:46:28 25 Now, the Judge mentioned a little bit about

10:46:37 1 burdens of proof, the way the burdens of proof work out,
10:46:40 2 what we have to prove to show that ASUS infringed on our
10:46:44 3 rights. It's called the preponderance of the evidence, and
10:46:46 4 that's basically the scales are dead even, and we throw one
10:46:50 5 more piece of paper on there that weighs in favor of us.
10:46:53 6 That means we've shown by a preponderance of the evidence,
10:46:55 7 proven our right to protect our property.

10:46:58 8 Anyone have a problem with that standard? Just
10:47:00 9 that doesn't sound right to you if you're going to hold
10:47:04 10 somebody liable for potentially millions of dollars, you
10:47:09 11 need more than that? You feel like that 50-50 plus one is
10:47:12 12 not enough for you? You can't follow the Judge's
10:47:16 13 instructions if he told you that's the standard that must
10:47:18 14 be followed? Anyone feel that way?

10:47:20 15 Anyone feel it should be higher?

10:47:23 16 Anyone feel it should be lower? You shouldn't
10:47:25 17 need to prove even that much?

10:47:27 18 Okay. Seeing no hands.

10:47:28 19 What about in a case that involves mostly
10:47:31 20 circumstantial evidence, right? Judge will tell you a
10:47:35 21 little later about that. I don't want to get too deep into
10:47:39 22 the weeds. But there's direct evidence, what we call the
10:47:42 23 proverbial smoking gun, and there's circumstantial
10:47:43 24 evidence. It's evidence that tends to prove that fact but
10:47:45 25 not quite like that smoking gun. The case is based mostly

10:47:50 1 on that kind of evidence, circumstantial evidence.

10:47:52 2 How many of y'all just couldn't -- you need direct
10:47:55 3 evidence to hold somebody liable for potentially millions
10:47:59 4 of dollars?

10:47:59 5 Mr. Bostic, tell me about that. Why?

10:48:05 6 PANEL MEMBER: I'm the type of person where you
10:48:07 7 show me the evidence, I've got proof. You tell me about
10:48:11 8 what's happened -- you tell me, okay, this is what happened
10:48:15 9 but you got no proof. Okay. Why? Why don't you -- why
10:48:21 10 can't you prove to me that's what happened?

10:48:24 11 MR. BENNETT: So circumstantial evidence is a form
10:48:25 12 of proof. Could you follow circumstantial evidence and
10:48:29 13 still hold someone liable?

10:48:33 14 PANEL MEMBER: If there's enough of it there. You
10:48:35 15 got to have enough of it there. You got to show me why
10:48:38 16 there's enough -- why there's evidence there. Why -- you
10:48:39 17 got to show me the evidence, if that makes -- you got to
10:48:43 18 have enough -- something there to show me that there's a
10:48:47 19 reason. That's proof.

10:48:49 20 You got to show me. You got to have something
10:48:52 21 physical there. You got to have -- you got to give me a
10:48:55 22 reason. You got make me -- give me a reason that there --
10:48:58 23 there's evidence there.

10:48:59 24 MR. BENNETT: Understood. Thank you, Mr. Bostic.

10:49:03 25 Anyone feel like Mr. Bostic?

10:49:03 1 Ms. --

10:49:07 2 PANEL MEMBER: Rodgers.

10:49:07 3 -- Rodgers. Thank you. We used to have numbers.

10:49:11 4 PANEL MEMBER: I agree with Mr. Bostic. If you
10:49:17 5 don't have the evidence in front of you or something,
10:49:19 6 whether it's hearsay, whether it's on social media, whether
10:49:23 7 it's anything with that matter, I need physical evidence.
10:49:25 8 I want it laid out. I want to be able to see it. I want
10:49:29 9 to be able to hear it.

10:49:31 10 Speaking of preference from experience that I'm
10:49:33 11 going through right now, I don't care about what's on
10:49:35 12 social media, what statements, anything. I want it --
10:49:38 13 evidence. I want to be able to see it. I want to be able
10:49:40 14 to hear it. I want to be able to review it, go through it
10:49:43 15 step-by-step, and understand the process of the evidence
10:49:45 16 that you have, that you can defend in court.

10:49:49 17 MR. BENNETT: Okay. Thank you.

10:49:51 18 Mr. Ayers, tell me about that.

10:49:58 19 PANEL MEMBER: I was always told not to assume
10:50:00 20 anything. So if it's black and white, it's black and
10:50:05 21 white. If you don't know, don't guess.

10:50:09 22 MR. BENNETT: Okay. Thank you.

10:50:10 23 Anyone feel like Mr. Ayers?

10:50:12 24 All right. In terms of hobbies, any gamers here
10:50:12 25 anywhere?

10:50:24 1 Mr. Ayers?

10:50:24 2 Any hands high? Play a lot of video games?

10:50:26 3 Social media? iPad? Whatever it is. No?

10:50:29 4 How about IT profession? Been in IT, worked in

10:50:32 5 IT, networking? Anything like that?

10:50:38 6 Yes, Mr. Bostic, you have?

10:50:40 7 PANEL MEMBER: In the past.

10:50:41 8 MR. BENNETT: In the past?

10:50:42 9 Okay. Anyone else?

10:50:44 10 How about digital photography? Really into it,

10:50:49 11 sort of a hobby, use software that involves digital

10:50:58 12 photography? Anyone? Hands high if you do. No?

10:51:00 13 How about social media users? Instagram? TikTok?

10:51:05 14 Whatever it is.

10:51:05 15 Mr. Ayers, okay.

10:51:05 16 Hands high, hands high.

10:51:07 17 All right. Those of you with your hands up edit

10:51:10 18 photos through that social media? Any photo editing done

10:51:10 19 there? No.

10:51:13 20 All right. Ms. Elson; is that right? All right.

10:51:16 21 Thank you.

10:51:30 22 Your Honor, that concludes my examination.

10:51:33 23 THE COURT: Very well.

10:51:34 24 At this time, the Defendant may voir dire the

10:51:36 25 panel.

10:51:40 1 MR. OLIVER: Again, folks, thank you for -- thank
10:51:48 2 you for being here.

10:51:49 3 My name is Andrew Oliver. Like my colleague here,
10:51:54 4 I'll share a little bit about myself so that you have a
10:51:57 5 little bit of familiarity with me.

10:51:58 6 I've been married for about 24 years. I have two
10:52:02 7 kids. They're both daughters. One's a preteen; one's a
10:52:06 8 teen. So while I don't have the one-year-old twin issue,
10:52:11 9 I've got my own issues to deal with.

10:52:15 10 In my free time, I tend to spend a lot of time
10:52:20 11 with my kids. So I'm teaching Sunday school for their
10:52:24 12 Sunday school classes, going to soccer games, and we like
10:52:28 13 to take road trips. Like my colleague here said he likes
10:52:33 14 to visit national parks, this summer, we're road-tripping
10:52:39 15 up to Montana to see Glacier National Park and Yellowstone.
10:52:39 16 So that's what we like to do with our free time.

10:52:41 17 My colleague, Mr. Joshi, also has two kids a
10:52:44 18 little older than mine. His son just finished his first
10:52:49 19 year at Baylor, and his daughter is in high school. And he
10:52:52 20 also spends a lot of time at soccer games like myself.

10:52:56 21 Questions for you, you heard a few of -- a few
10:53:00 22 questions about photography and so on and digital editing.

10:53:04 23 Is anybody here a professional artist or a graphic
10:53:08 24 designer, or have you done work in that area, including
10:53:13 25 electronic work or photo work? Anybody with that type of

10:53:18 1 experience?

10:53:18 2 Okay. This is a little bit sensitive of a
10:53:21 3 question. So maybe Your Honor can say whether they should
10:53:27 4 answer once I ask it.

10:53:28 5 But the question is: Is anybody color blind, or
10:53:33 6 would you have difficulty seeing representations of color?

10:53:35 7 Is that okay to ask, Your Honor? Okay.

10:53:37 8 THE COURT: I think so.

10:53:38 9 MR. OLIVER: Anybody color blind? Okay.

10:53:41 10 Would anybody have difficulty seeing something on
10:53:44 11 a screen, like reading words on that big screen there or if
10:53:49 12 we're looking at a smaller screen like this, seeing images
10:53:57 13 on it? Would anybody have a hard time seeing that from
10:54:01 14 where you're sitting? And you'll probably be a little
10:54:05 15 closer if you're actually on the panel.

10:54:07 16 Okay. Does anybody have any issues with somebody
10:54:17 17 having rights that they feel are violated for 14 or 16
10:54:21 18 years and then suing the person violating those rights
10:54:25 19 without ever contacting them before the lawsuit?

10:54:28 20 So you feel like somebody has been violating your
10:54:30 21 rights for 10 years, but you never tell them, and then you
10:54:34 22 sue them for millions of dollars? Any problems with that?

10:54:40 23 Okay. Does anybody ever feel like a Defendant is
10:54:42 24 guilty just because they get sued because Plaintiff must
10:54:46 25 have had a reason to sue them, so they must be guilty? No?

10:54:50 1 Okay. Does anybody feel like the Plaintiff should
10:54:58 2 get the benefit of the doubt coming into the trial because
10:55:01 3 they filed a lawsuit, and you're now in court?

10:55:06 4 You saw my colleague briefly hold up a copy of the
10:55:14 5 patent. You didn't get to see what's in it. You'll get a
10:55:19 6 chance to see what's in it, but the patent is issued by the
10:55:23 7 U.S. Patent Office. It comes with a presumption that it's
10:55:27 8 valid.

10:55:28 9 But if you're asked to decide based on evidence
10:55:30 10 that the patent is invalid and if Judge Schroeder tells
10:55:35 11 you, take this evidence, apply these principles of law, and
10:55:38 12 decide whether the patent is valid or invalid, you have the
10:55:42 13 power to overturn the Patent Office, do you feel like you
10:55:46 14 would not be able to do that, that you would be blocked
10:55:49 15 because you feel like the Patent Office issued a patent,
10:55:52 16 and, therefore, there's no way for me as a juror to turn it
10:55:57 17 over?

10:55:58 18 Okay. Final question. Don't want to take up all
10:56:09 19 of your time. Do you feel like -- do any of you have any
10:56:12 20 feelings that you would not be able to be fair to an
10:56:17 21 international company? ASUS is international. They have
10:56:21 22 got operations here. They have got operations in Taiwan
10:56:24 23 and other countries.

10:56:26 24 As I mentioned, Mr. McCarty's oversees teams that
10:56:30 25 help service ASUS products in South America.

10:56:34 1 But do you feel like you would not be able to be
10:56:36 2 fair to an international company that manufactures products
10:56:40 3 outside of the United States and sells them within the
10:56:42 4 United States? No?

10:56:44 5 Okay. Well, thank you. I didn't get to -- didn't
10:56:52 6 have to have anybody come up to the stand.

10:56:54 7 Appreciate your time.

10:56:55 8 THE COURT: Thank you, Mr. Oliver.

10:56:57 9 Let me ask counsel for the parties to pass up
10:57:01 10 lists for any additional questions.

10:57:18 11 MR. BENNETT: We have just a few, Your Honor.

10:57:23 12 THE COURT: If you would, pass those up.

10:57:23 13 MR. OLIVER: Your Honor, we don't have any further
10:57:27 14 questions.

10:57:52 15 MR. BENNETT: May I approach, Your Honor?

10:57:58 16 THE COURT: Yes, please.

10:58:21 17 Okay. Ladies and gentlemen of the jury, thank you
10:58:25 18 for your attention and your patience this morning.

10:58:27 19 I'm going to ask three jurors to remain in the
10:58:31 20 courtroom, and I want to tell you a little bit about the
10:58:35 21 next phase.

10:58:36 22 I'm going to dismiss everyone to adjourn to Judge
10:58:42 23 Mitchell's courtroom for a short period. We have to have
10:58:45 24 further discussion outside of your presence, and all of
10:58:48 25 that will take I think about somewhere between 20 and

10:58:51 1 30 minutes.

10:58:52 2 And I hope to have you walk -- brought back in,
10:58:56 3 and by the time we have you brought back in, we will have
10:58:59 4 the jury selected, and those of you who are not on the jury
10:59:04 5 will be able to get your week started.

10:59:07 6 What I would like for you to do is to remember a
10:59:10 7 couple of rules. Don't discuss anything about the case
10:59:14 8 with anyone. When the jury begins its deliberations at the
10:59:20 9 end of the week, it'll base its decision solely upon the
10:59:25 10 evidence that comes through that witness stand and through
10:59:27 11 the admission of exhibits.

10:59:32 12 So nothing you've seen so far this morning, of
10:59:36 13 course, will have anything to do with the jury's actual
10:59:38 14 deliberations. So don't start forming opinions in your
10:59:42 15 mind about the case based on some conversation you might
10:59:45 16 have with someone.

10:59:46 17 Talk about the nasty weather we had this morning
10:59:50 18 and what it's -- looks like it's going to be like all week,
10:59:55 19 talk about football or grandkids or whatever you want to
10:59:59 20 talk about, just not about the case.

11:00:01 21 Also, don't do any research about the case into
11:00:05 22 the parties or the attorneys.

11:00:08 23 I'm going to ask, let's see, Mr. Wilkinson,
11:00:13 24 Ms. Elson, and Ms. Decco, if you would, to remain back, and
11:00:20 25 everyone else is going to be dismissed at this time.

11:00:23 1 Please keep your masks on, and observe social
11:00:29 2 distancing protocols, get a drink of water, use the
11:00:33 3 restroom. We'll get you back into the courtroom as quickly
11:00:38 4 as we can.

11:01:30 5 (Jury panel out.)

11:01:33 6 THE COURT: Okay. You all may be seated.

11:01:37 7 Okay. Mr. Wilkinson, if you would come forward.

11:01:37 8 (Panel member brought forward.)

11:01:54 9 THE COURT: Mr. Wilkinson, you raised your hand in
11:01:58 10 the beginning when I asked about anything that you might
11:02:02 11 have had planned for this week that would create a problem
11:02:04 12 for you serving on the jury. I've got a couple of jurors
11:02:09 13 still -- panel members still in here. Can we talk about it
11:02:14 14 in front of everybody?

11:02:16 15 PANEL MEMBER: Yes.

11:02:16 16 THE COURT: Okay.

11:02:17 17 PANEL MEMBER: The businesses that I own is kind
11:02:18 18 of -- basically they're the boarding kennels. I have two
11:02:23 19 boarding kennels and a dog grooming service. The one I
11:02:27 20 have at my residence, full-time, I work it from sometimes
11:02:32 21 6:00 o'clock to about 8, 9:00 o'clock at night, for the
11:02:38 22 health of the dogs, you know, let them out and stuff.
11:02:41 23 Since the COVID, I've laid off six people --

11:02:41 24 THE COURT: Yes, sir.

11:02:44 25 PANEL MEMBER: -- and I've got two of them back.

11:02:47 1 We are running low. We don't -- we haven't had that much
11:02:51 2 business. We're just now starting to get the business.

11:02:54 3 THE COURT: Okay.

11:02:54 4 PANEL MEMBER: So I've got one person that helps
11:02:57 5 me, and I'm not paying overtime, so she can only work about
11:03:02 6 40 hours a week --

11:03:03 7 THE COURT: Yes, sir.

11:03:04 8 PANEL MEMBER: -- which is about half of what I
11:03:06 9 normally run. But her days is -- you know, she's had to
11:03:11 10 have people take her kid to school this morning so she can
11:03:15 11 come to work early, and we were no -- you know, advance
11:03:18 12 about that. On Thursdays she's got prior arrangements, and
11:03:24 13 she's off on Thursdays so I can get her to work some of the
11:03:27 14 weekends for me.

11:03:28 15 THE COURT: Okay.

11:03:28 16 PANEL MEMBER: So on Thursday, I'm the only one
11:03:32 17 running the main facility. It's not our biggest facility,
11:03:37 18 but it's our main facility.

11:03:39 19 THE COURT: Yes, sir. Okay. Tell you what,
11:03:42 20 Mr. Wilkinson, let me ask you to step out in the hall very
11:03:46 21 briefly, and let me visit with the attorneys.

11:03:48 22 PANEL MEMBER: Okay.

11:03:49 23 THE COURT: I'll have you brought right back in.

11:03:52 24 (Panel member excused to hallway.)

11:03:52 25 THE COURT: Either side have any objection to

11:04:01 1 releasing Mr. Wilkinson?

11:04:05 2 MR. BENNETT: No objection, Your Honor.

11:04:07 3 MR. JOSHI: No objection.

11:04:08 4 THE COURT: Would you have him brought back in?

11:04:11 5 (Panel member brought into courtroom.)

11:04:16 6 THE COURT: Mr. Wilkinson, you can stand right
11:04:22 7 there. I appreciate you telling us what your situation is.

11:04:25 8 I hope once we get past the pandemic and life gets
11:04:29 9 back more normal for you that you will be able to come back
11:04:33 10 and serve as a juror for us, but I'm going to release you
11:04:36 11 at this time.

11:04:37 12 PANEL MEMBER: Thank you very much.

11:04:37 13 THE COURT: Thank you very much.

11:04:39 14 MR. BENNETT: Thank you, Mr. Wilkinson.

11:04:43 15 (Panel member excused from courtroom.)

11:04:43 16 THE COURT: Ms. Elson.

11:04:48 17 MR. BENNETT: Your Honor, if I may, I miscounted.
11:04:52 18 It's my fault. I think we've got enough jurors left after
11:04:56 19 Mr. Wilkinson still. We probably don't need to talk to
11:05:01 20 Ms. Elson --

11:05:02 21 THE COURT: I think I need to talk to them because
11:05:04 22 they mentioned that they had a hardship.

11:05:04 23 (Panel member brought into courtroom.)

11:05:07 24 THE COURT: Yes, ma'am, Ms. Elson?

11:05:08 25 PANEL MEMBER: I have a 9-month-old daughter, and

11:05:10 1 right now she can't go to daycare because of COVID. She's
11:05:15 2 not old enough.

11:05:15 3 THE COURT: Yes, ma'am.

11:05:16 4 PANEL MEMBER: So I have somebody outside of
11:05:18 5 there. A tree just fell on her house, so they're getting a
11:05:22 6 camper, and that's the day that it's being delivered and
11:05:26 7 she can't watch my daughter.

11:05:27 8 THE COURT: Okay. It sounds like to me you
11:05:29 9 probably got more on your plate this week than you can say
11:05:34 10 grace over. If you will step out in the hall real quick,
11:05:37 11 let me visit with the attorneys.

11:05:39 12 (Panel member excused to hallway.)

11:05:39 13 THE COURT: Either side have any objection to
11:05:42 14 releasing Ms. Elson?

11:05:44 15 MR. BENNETT: No objection, Your Honor.

11:05:46 16 MR. JOSHI: No objection.

11:05:47 17 THE COURT: All right. Have her brought back in.

11:05:51 18 (Panel member brought into courtroom.)

11:05:51 19 THE COURT: Ms. Elson, I'm going to release you.
11:05:54 20 Thank you. I hope you will come back some time and be on a
11:06:03 21 jury for us.

11:06:04 22 PANEL MEMBER: Thank you.

11:06:04 23 THE COURT: All right. Thank you, ma'am.

11:06:04 24 MR. BENNETT: Thank you, Ms. Elson.

11:06:06 25 THE COURT: Ms. Decco, if you would.

11:06:08 1 (Panel member brought forward.)

11:06:08 2 THE COURT: Ms. Decco, you went into some of the,
11:06:11 3 I guess, hardships maybe that you've got going on in your
11:06:14 4 life right now, and it seems to me you've got plenty to
11:06:20 5 worry about without serving on a jury. I appreciate your
11:06:24 6 service. I don't think either of the parties have any
11:06:26 7 objection to releasing you.

11:06:28 8 MR. BENNETT: None.

11:06:31 9 MR. OLIVER: No objection.

11:06:32 10 THE COURT: Okay. Thank you, Ms. Decco, for being
11:06:36 11 here. I hope you will come back some time and be on a jury
11:06:41 12 for us.

11:06:42 13 PANEL MEMBER: Thank you.

11:06:43 14 THE COURT: Thank you, ma'am.

11:06:43 15 (Panel member excused from courtroom.)

11:06:43 16 THE COURT: Okay. Cause challenges? Any?

11:06:47 17 MR. BENNETT: No, Your Honor. Plaintiff has none.

11:06:56 18 MR. OLIVER: Your Honor, just one. I'm not
11:06:58 19 sure --

11:06:59 20 THE COURT: Could you go to the podium so I can
11:07:01 21 hear you well?

11:07:02 22 MR. OLIVER: Your Honor, just one. I don't know
11:07:04 23 if this rises to your standard, but just want to raise it.
11:07:09 24 Celsey Rodgers mentioned her brother was murdered, and she
11:07:16 25 wasn't sure if she could get justice. And I'm not sure

11:07:22 1 whether she'll be able to fairly deliver justice.

11:07:22 2 THE COURT: Mr. Oliver, I'd like to hear from
11:07:25 3 Mr. Bennett about this. And, Mr. Bennett, I will just tell
11:07:26 4 you candidly, I think Ms. Rodgers is a little bit of a
11:07:27 5 problem.

11:07:28 6 MR. BENNETT: We agree, Your Honor.

11:07:29 7 THE COURT: Okay. Let's release Ms. Rodgers by
11:07:33 8 agreement of the parties. And I think that if that is the
11:07:35 9 case, based upon the shuffled list, which you all have
11:07:42 10 before you or should have before you, Ms. Rodgers is Juror
11:07:47 11 No. 10, correct?

11:07:54 12 MR. BENNETT: That's correct, Your Honor.

11:07:58 13 MR. OLIVER: Yes, that's correct.

11:08:00 14 THE COURT: We have released Mr. Wilkinson due to
11:08:05 15 a hardship, and we are releasing Ms. Rodgers by agreement
11:08:24 16 of the parties.

11:08:55 17 I'm informed that Mr. Gross would like to speak to
11:08:59 18 us, and I think we better do that.

11:08:59 19 (Panel member brought into courtroom.)

11:09:53 20 THE COURT: Come around, Mr. Gross.

11:09:55 21 PANEL MEMBER: Where do you want me?

11:09:56 22 THE COURT: Come up to the podium -- or to the
11:10:00 23 microphone, please.

11:10:00 24 PANEL MEMBER: Yes, sir.

11:10:01 25 THE COURT: Do you have something that you need to

11:10:03 1 speak to us about that didn't come up before?

11:10:06 2 PANEL MEMBER: Yes. I just wanted to bring it up.
11:10:09 3 I thought in some of questionnaire or questioning, it would
11:10:11 4 come up a little bit. When I filled out my questionnaire
11:10:14 5 or my survey or -- you know, and sent it in and everything,
11:10:17 6 my wife kind of got on me that I didn't bring it up -- I
11:10:21 7 guess you could call it a medical condition. But I have a
11:10:24 8 real issue -- kind of chronically -- of nodding off and
11:10:29 9 getting very sleepy. And I had sleep apnea surgery in
11:10:34 10 2003. I've been on a CPAP machine since about 2015. Lost
11:10:41 11 about 35 pounds in the last two years, so that has helped.
11:10:41 12 I still have some issues. I just went through another
11:10:44 13 sleep study -- third -- third one, I guess, I've had. And
11:10:45 14 home study and then where you go to the place. And I went
11:10:47 15 to a new -- it's called the Sleep Institute of Tyler, new
11:10:57 16 place that I hadn't been before.

11:11:00 17 Anyway, I'm about to switch to a BiPAP machine
11:11:03 18 instead of a CPAP. My wife is convinced that -- has told
11:11:08 19 the doctor, and he thinks there are some reasons to be
11:11:11 20 concerned about like slight narcolepsy. Not the kind where
11:11:15 21 you just collapse or fall asleep like that, but like where
11:11:20 22 you go into REM sleep immediately. I can just be sitting
11:11:24 23 and nod off for a second and kind of go into a dream state.
11:11:28 24 Anyway, it just causes some issues with concentration.

11:11:34 25 THE COURT: Focus and attention?

11:11:35 1 PANEL MEMBER: Yeah. And my attention. So,
11:11:37 2 anyway, I don't want to be in a situation where I'm
11:11:40 3 embarrassing myself, and I get -- usually get pretty good
11:11:44 4 sleep, I got about 7 hours sleep last night. That's really
11:11:48 5 good for me.

11:11:48 6 THE COURT: That's a lot more than I got.

11:11:48 7 PANEL MEMBER: That's really good for me.
11:11:51 8 Sometimes it's five and a half or six hours. But anyway --
11:11:53 9 and I'm not trying to make some kind of excuse. If I had
11:11:55 10 my phone, I could show you all the appointments and all
11:11:58 11 that kind of stuff, which I can't.

11:11:59 12 THE COURT: I understand.

11:12:00 13 PANEL MEMBER: But I don't want to embarrass
11:12:02 14 myself. I don't want to be in a position where I'm trying
11:12:02 15 to remember --

11:12:02 16 THE COURT: Right.

11:12:03 17 PANEL MEMBER: -- if somebody else is talking
11:12:04 18 about something and we're deliberating or something like
11:12:06 19 that, and I'm like I don't even remember that and that kind
11:12:08 20 of thing. Anyway, that's just my concern with that.

11:12:09 21 THE COURT: Okay. Let me ask -- Mr. Bennett, do
11:12:13 22 you have any questions for Mr. --

11:12:16 23 PANEL MEMBER: Gross.

11:12:17 24 THE COURT: -- Mr. Gross?

11:12:18 25 MR. BENNETT: Just a couple, if I may, Your Honor.

11:12:24 1 THE COURT: Yes.

11:12:24 2 MR. BENNETT: Mr. Gross -- and I'm not fussing at
11:12:26 3 you -- but is it the case today you nodded off a little bit
11:12:29 4 during the selection?

11:12:30 5 PANEL MEMBER: Probably. I mean, there were a
11:12:32 6 couple of times I was kind of fidgeting, and, you know, I
11:12:35 7 kind of -- yeah, probably.

11:12:36 8 MR. BENNETT: Okay. And if you were on the jury,
11:12:38 9 would you have difficulty paying attention, focusing on
11:12:40 10 some -- what's going to be highly exhilarating to me and
11:12:44 11 pretty dry maybe to some other folks?

11:12:47 12 PANEL MEMBER: Maybe. My work -- I'm on my feet
11:12:51 13 all day. When I sit down, it's not for real long periods
11:12:55 14 of time. The only time I struggle with it is in -- last
11:13:01 15 year, we had meetings -- Zoom-type meetings. My supervisor
11:13:03 16 knows about it. He knows that I may get up and stand over
11:13:06 17 to the side and that kind of thing in a meeting, especially
11:13:08 18 after lunch, something like that, but possibly -- possibly.

11:13:11 19 MR. BENNETT: Thank you. Appreciate it.

11:13:13 20 THE COURT: Mr. Oliver, any questions you have?

11:13:15 21 MR. OLIVER: No, Your Honor.

11:13:16 22 THE COURT: Okay. Mr. Gross, let me ask you to go
11:13:19 23 back in the hall and let me visit with the attorneys and
11:13:23 24 we'll make a decision. I appreciate very much you bringing
11:13:28 25 this to my attention and the parties' attention and your

11:13:35 1 candor about it. And I'll visit with them, and we'll
11:13:38 2 decide the proper approach. But thank you very much and
11:13:40 3 best of luck with getting it resolved.

11:13:43 4 PANEL MEMBER: Thank you. Appreciate it.

11:13:47 5 (Panel member excused to hallway.)

11:13:47 6 THE COURT: What do you want to do about
11:13:52 7 Mr. Gross?

11:13:52 8 MR. BENNETT: I think probably for cause, we have
11:13:54 9 to strike him. I saw him nod off during presentations
11:13:58 10 today, during voir dire.

11:14:00 11 THE COURT: Mr. Oliver, any objection to that?

11:14:02 12 MR. OLIVER: No objection.

11:14:03 13 THE COURT: All right. We'll just release him by
11:14:05 14 agreement of the parties.

11:14:06 15 All right. So that removes Mr. Gross, which I
11:14:06 16 think means we now strike -- each side will have three
11:14:06 17 preemptory strikes.

11:14:25 18 As you know, we have released Mr. Gross, we have
11:14:29 19 released Mr. Wilkinson based on a hardship, and we've
11:14:30 20 released Ms. Rodgers by agreement of the parties. With the
11:14:40 21 eight jurors who will be among the jury and three
11:14:42 22 preemptory strikes assigned, that should put us through
11:14:46 23 Juror No. 17.

11:14:47 24 Do the parties agree with that?

11:14:49 25 MR. BENNETT: That would be Ms. Miller,

11:14:51 1 Your Honor -- Mr. Lyle, excuse me.

11:14:53 2 THE COURT: I'm sorry, Mr. Bennett?

11:14:56 3 MR. BENNETT: I wasn't sure who No. 17 was,
11:14:58 4 Your Honor. I was just making sure I had my notes right.

11:15:01 5 THE COURT: 17 is Mr. Lyle. Do the parties agree
11:15:04 6 with the strike zone as I have described it?

11:15:07 7 MR. BENNETT: Yes, Your Honor.

11:15:08 8 MR. OLIVER: Yes, Your Honor. Meaning everyone
11:15:11 9 below 17 won't be on it regardless?

11:15:14 10 THE COURT: That is correct. That's correct.

11:15:16 11 All right. So you guys will have 15 minutes to
11:15:19 12 make your strikes, and we'll go back on the record then.
11:15:24 13 We'll be in recess.

11:15:26 14 (Recess taken.)

11:19:28 15 COURT SECURITY OFFICER: All rise.

11:38:01 16 THE COURT: Please be seated.

11:38:10 17 Okay. Thank you, ladies and gentlemen, for your
11:38:14 18 patience with us. It took -- took maybe a little bit
11:38:18 19 longer than I -- than I suggested it would.

11:38:29 20 Mrs. Schroeder, if you would now call the names of
11:38:31 21 the jurors selected.

11:38:32 22 COURT DEPUTY: Kelly Miller.

11:38:34 23 Steve Mitchell.

11:38:37 24 Debra Stanford.

11:38:42 25 Brian Bittick.

11:38:43 1 Jim Lambeth.

11:38:46 2 Wilma Ray.

11:38:48 3 Judy Johnson.

11:38:59 4 Karen Vaughan.

11:39:01 5 THE COURT: Okay. Ladies and gentlemen of the
11:39:05 6 panel, those who were not selected to serve as members of
11:39:10 7 the jury, I am about to excuse you, and I do so with the
11:39:14 8 thanks of the Court for your being here.

11:39:17 9 I know it's been a long morning. As I explained
11:39:20 10 earlier, you all have performed a great public service by
11:39:23 11 being here today, and I hope that the next time you are
11:39:27 12 called to appear for jury service that you come with the
11:39:31 13 same positive, helpful attitude that you have shown to all
11:39:35 14 of us today.

11:39:36 15 So as I said at the very beginning, I really do
11:39:38 16 believe that jury service is one of the most important
11:39:41 17 public services you can render to your nation. And by
11:39:45 18 being here today and by participating as you have, you
11:39:49 19 have -- you're doing what your country has asked you to do,
11:39:53 20 too.

11:39:54 21 So on behalf of the Eastern District of Texas, the
11:39:57 22 parties involved in this lawsuit and the attorneys, I want
11:39:59 23 to thank you for your presence here today.

11:40:02 24 Those of you not selected as members of the jury
11:40:06 25 are dismissed at this time. Thank you.

11:40:10 1 (Venire panel out.)

11:40:50 2 THE COURT: Okay. You all may be seated.

11:40:53 3 Okay. Ladies and gentlemen of the jury, if you
11:40:56 4 would, please stand at this time, and Mrs. Schroeder will
11:41:01 5 administer the oath.

11:41:04 6 (Jurors sworn.)

11:41:18 7 THE COURT: Okay. Ladies and gentlemen of the
11:41:22 8 jury, I -- the good news is we've got lunch for you. We
11:41:28 9 will be providing lunch for you throughout the course of
11:41:31 10 the week.

11:41:32 11 The bad news is it's not quite here yet --

11:41:32 12 COURTROOM DEPUTY: Yes, it is here.

11:41:36 13 THE COURT: Oh, I thought it was noon.

11:41:36 14 COURTROOM DEPUTY: No, it's here.

11:41:39 15 THE COURT: Okay. Your lunch is here.

11:41:41 16 Let me give you a couple of instructions. When
11:41:46 17 you get back from lunch, I will have some more fulsome
11:41:50 18 instructions for you about what the case is about and some
11:41:54 19 rules I'm going to ask you to follow throughout the course
11:41:57 20 of the week.

11:41:59 21 For now, the rules are fairly simple. Don't talk
11:42:04 22 about anything you have seen so far. You haven't heard any
11:42:08 23 testimony. You haven't heard any instructions on the law.
11:42:11 24 You haven't heard any arguments of the attorneys. So the
11:42:16 25 things that you will base your deliberations and your

11:42:20 1 verdict on haven't started yet.

11:42:24 2 So don't talk about the case. Don't do any
11:42:27 3 investigation about the case. Don't Google the parties or
11:42:31 4 the subject matter or the attorneys or anything of that
11:42:35 5 nature, and, likewise, please don't post anything about the
11:42:38 6 proceedings so far.

11:42:40 7 And, essentially, those are the rules I'm going to
11:42:43 8 ask you to follow. As I said, I'll give you further
11:42:47 9 instructions when you get back from lunch.

11:42:50 10 Let me tell you a little bit about what the trial
11:42:52 11 week will be like. I will ask you all to be here by 8:45
11:42:58 12 in the morning, and we'll start promptly with you here in
11:43:02 13 the courtroom at 9:00.

11:43:06 14 We will go somewhere until the mid morning, and
11:43:08 15 we'll take a 15-minute break in the morning. We'll break
11:43:12 16 over the lunch hour for about an hour. We'll come back,
11:43:16 17 and we'll go until somewhere in the neighborhood of 3:00 in
11:43:19 18 the afternoon and we'll take a 15-minute break, and then
11:43:22 19 we'll go until about 5:00 at the end of the day.

11:43:27 20 If we have a witness whose testimony might take a
11:43:31 21 little bit longer to -- in order to get him or her off the
11:43:34 22 stand and completed, we might go a little bit after 5:00.
11:43:39 23 If we have a witness whose testimony is about to begin and
11:43:42 24 it will be a longer examination and it's, you know,
11:43:47 25 10 minutes until 5:00 o'clock, we might stop a little early

11:43:51 1 for that day. It'll just be subject to witness
11:43:53 2 availability and scheduling, but that is generally what our
11:43:56 3 trial day will look like.

11:43:58 4 As I said, we will provide lunch for you each day
11:44:03 5 here, and that will, you know, eliminate the need of your
11:44:10 6 having to arrange for that and get in and out of the
11:44:14 7 courthouse. Besides the weather is going to be bad all
11:44:17 8 week long, too.

11:44:19 9 So that's generally what our trial day will look
11:44:22 10 like. I will give you, as I said, further instructions.

11:44:26 11 One other thing that I will tell you is the
11:44:28 12 attorneys and I will get here early in the morning to try
11:44:32 13 to resolve any evidentiary matters that need to be resolved
11:44:35 14 outside of your presence. We'll do that over the lunch
11:44:38 15 hours, as well, and we will stay here in the evenings to
11:44:41 16 resolve anything so that we don't make you wait for us in
11:44:45 17 the courtroom -- I mean, in the jury room.

11:44:47 18 I'm not a big fan of making the jury wait, and we
11:44:51 19 will do our very best, I know, to avoid that where at all
11:44:57 20 possible.

11:44:57 21 However, they are a necessary part of any trial
11:45:05 22 occasionally, and there might be something that we have to
11:45:08 23 discuss outside of your presence and that will require you
11:45:12 24 to wait for us in the jury room. But I'll promise you,
11:45:15 25 we're going to keep that to a bare minimum, and we'll do

11:45:18 1 all -- we will all do our very best and -- and keep that to
11:45:22 2 a minimum.

11:45:24 3 So let me go ahead and release you now.

11:45:27 4 Mr. Richardson, is their lunch back in the jury
11:45:32 5 room?

11:45:33 6 COURT SECURITY OFFICER: Yes, sir.

11:45:34 7 THE COURT: Your lunch is in the jury room right
11:45:36 8 through those double doors right there.

11:45:45 9 We will plan on resuming here in the courtroom at
11:45:48 10 1:00. That will give you a little extra time. And then
11:45:49 11 we'll begin with preliminary instructions, and then
11:45:52 12 immediately following that, the attorneys will present
11:45:54 13 their opening statements to you.

11:45:56 14 So we'll be in recess at this time.

11:45:59 15 COURT SECURITY OFFICER: All rise for the jury.

11:45:59 16 (Jury out.)

12:37:04 17 (Recess.)

01:06:50 18 COURT SECURITY OFFICER: All rise.

01:06:50 19 THE COURT: Please be seated.

01:06:56 20 Okay. Just a couple of things before we get
01:06:59 21 started.

01:07:03 22 Mr. Joshi, I have reviewed documents that were
01:07:05 23 marked as Plaintiff's Exhibit 26. I guess what I want to
01:07:10 24 understand from you is, candidly, I think what's there is
01:07:17 25 okay.

01:07:19 1 Is it your contention that there is anything
01:07:24 2 inconsistent in the documents that would weigh against what
01:07:29 3 the Plaintiff has represented to us that those are ASUS
01:07:32 4 user manuals?

01:07:34 5 MR. JOSHI: So the ones that I have reviewed, I
01:07:38 6 couldn't review all 139 of them, they are -- they look like
01:07:42 7 our manuals.

01:07:44 8 What -- the bigger concern is the bigger
01:07:47 9 collection, there were many non-ASUS things. Some of the
01:07:53 10 ASUS manuals that -- that they look very similar to ours,
01:07:57 11 they're not from -- they were not pulled down from an ASUS
01:08:00 12 website. So I can't be sure, but --

01:08:02 13 THE COURT: Well, I guess my question for you and
01:08:05 14 what I would request is if there are some that you think
01:08:10 15 that -- if there are, indeed, some that you believe are
01:08:13 16 inconsistent, then you're going to need to raise that with
01:08:16 17 me and let me know that.

01:08:18 18 But based on my review, I do think there is
01:08:22 19 sufficient evidence to authenticate these user manuals
01:08:26 20 under Federal Rule of Evidence 901(b)(4). So I'm going to
01:08:31 21 overrule ASUS's objection based on authentication.

01:08:35 22 Certainly, to the extent you want to
01:08:49 23 cross-examine, you know, any witness about where the
01:08:52 24 documents came from, you may do so, but I think there is
01:08:56 25 enough evidence for the jury to consider these documents as

01:08:56 1 exhibits.

01:09:03 2 And I also don't believe that the user manuals are
01:09:03 3 hearsay because they're a statement of a party opponent
01:09:03 4 under 801(d)(2).

01:09:15 5 And then was there a question -- you all didn't
01:09:17 6 raise this or we didn't discuss it, but with respect to
01:09:19 7 Claim 17 being invalidated, was there an issue that we
01:09:23 8 needed to discuss regarding that?

01:09:24 9 MR. BENNETT: Yes, that was Plaintiff's issue,
01:09:26 10 Your Honor.

01:09:27 11 Let me grab the microphone, sorry. Is it on?
01:09:28 12 There we go.

01:09:30 13 Okay. That was Plaintiff's issue. There were
01:09:31 14 some -- Your Honor will recall -- it went off. There we
01:09:34 15 go. You got to be really close. Sorry about that. Okay.
01:09:37 16 Try again.

01:09:37 17 So you'll recall at the end of the May 11th,
01:09:43 18 pretrial hearing, Mr. Joshi raised the issue of talking
01:09:47 19 about Claim 17. Your Honor asked us to discuss it. We
01:09:51 20 didn't agree. And it's in their opening slides.

01:09:55 21 They want to talk about the invalidated -- the
01:10:01 22 other -- the second invalidated independent claim. We
01:10:04 23 think that's unduly prejudiced under 403, likely to confuse
01:10:07 24 the jury, and not helpful to the case.

01:10:10 25 THE COURT: Mr. Oliver?

01:10:12 1 MR. OLIVER: Yes, Your Honor.

01:10:13 2 The intent, just so you know the context, is we
01:10:15 3 plan to tell the jury that only the method claims are at
01:10:19 4 issue, and when they look at the patent, Claim 17 and all
01:10:23 5 of the system claims are not at issue, and that's because
01:10:27 6 Your Honor invalidated those claims already.

01:10:30 7 The issue that Plaintiff has raised is whether
01:10:36 8 it's prejudicial to discuss that.

01:10:38 9 As you recall, I was not at the hearing, but
01:10:42 10 Plaintiff wanted to discuss the procedural history of the
01:10:47 11 patent and said it was entirely acceptable to address the
01:10:51 12 jury and to say whether there had been challenges to
01:10:56 13 invalidity. And Plaintiff has taken the position that
01:11:00 14 that's okay.

01:11:02 15 And our response was if it's okay for you to
01:11:05 16 address that and whether there have been challenges to
01:11:09 17 invalidity, we should be able to raise the same issues, as
01:11:13 18 well.

01:11:13 19 THE COURT: May I see the slide?

01:11:14 20 MR. BENNETT: I have it -- I have it here,
01:11:16 21 Your Honor, if I may approach.

01:11:18 22 MR. OLIVER: The slide just shows a cut-out from
01:11:21 23 Claim 17, but my intent in speaking, just to make sure
01:11:26 24 you're fully aware, is to say Claim 17 isn't at issue.
01:11:31 25 There's no issue with selling the products.

01:11:33 1 THE COURT: So this is not the slide where it says
01:11:35 2 the claim was invalidated. You're talking about that's
01:11:40 3 just the claim --

01:11:41 4 MR. OLIVER: I'm talking about what I'm going to
01:11:43 5 say when that slide is up. I'm going to say, you don't
01:11:48 6 have to consider Claim 17. Judge Schroeder
01:11:51 7 already invalidated Claim 17 --

01:11:51 8 THE COURT: You can say you don't have to consider
01:11:54 9 Claim 17. That's no longer in the case.

01:11:55 10 MR. OLIVER: Okay.

01:11:56 11 THE COURT: Does that solve it?

01:11:57 12 MR. BENNETT: Yes, Your Honor.

01:11:58 13 MR. OLIVER: Thank you.

01:12:02 14 THE COURT: I think that's too prejudicial under
01:12:08 15 403, Mr. Oliver.

01:12:09 16 MR. OLIVER: Okay.

01:12:09 17 THE COURT: Anything else we need to address
01:12:11 18 before we have the jury brought in?

01:12:13 19 MR. BENNETT: Yes, Your Honor. We have one other
01:12:16 20 issue with slides. This one has to do with their motion
01:12:19 21 for reconsideration, as well, which we responded to. They
01:12:20 22 want to raise inoperability --

01:12:20 23 THE COURT: There should be an order out for
01:12:22 24 motion for consideration on the docket.

01:12:24 25 MR. BENNETT: Oh, okay.

01:12:30 1 THE COURT: It's not yet.

01:12:31 2 MR. BENNETT: Okay. So this is in their slide
01:12:33 3 deck. They intend to address it apparently, so we raised
01:12:37 4 it to prevent it being raised or similar issues, confusing
01:12:43 5 the jury, Rule 403.

01:12:45 6 MR. OLIVER: Yes, Your Honor. Your Honor has said
01:12:47 7 that -- in the order that inoperability is a question of
01:12:52 8 law only in this case, and we asked for reconsideration and
01:12:55 9 pointed out the case law that said Section 101 issues go to
01:13:01 10 the jury as an issue of fact.

01:13:03 11 So we don't know whether you've reconsidered that,
01:13:07 12 but if you say it's only a question of law, then we'll
01:13:11 13 delete it. But we weren't completely clear because your
01:13:14 14 order said: If Plaintiff continues to urge this matter,
01:13:19 15 you know, there could be another challenge by -- or I mean,
01:13:24 16 if Defendant continues to urge the matter, there might be
01:13:27 17 another challenge by Plaintiff. And so we weren't sure of
01:13:30 18 the context of where we would be urging that --

01:13:32 19 THE COURT: Sure. So I appreciate that, and it
01:13:34 20 hasn't -- it's not on the docket yet, and my apologies
01:13:38 21 about that. We will email you a copy of it. You will have
01:13:41 22 it. You'll understand what the analysis was, but
01:13:45 23 ultimately it's a question for the Court, not the jury.

01:13:45 24 MR. OLIVER: Okay. Thank you.

01:13:54 25 THE COURT: So you will get that slide --

01:13:56 1 MR. OLIVER: I will delete this slide. It won't
01:13:59 2 be a --

01:13:59 3 THE COURT: All right. Let's have the jury
01:14:01 4 brought in.

01:14:04 5 COURT SECURITY OFFICER: All rise for the jury.

01:14:06 6 (Jury in.)

01:15:00 7 THE COURT: Please be seated.

01:15:03 8 Okay. Ladies and gentlemen of the jury, you have
01:15:15 9 now been sworn in as the jury that will try this case. As
01:15:19 10 the jury, you will decide disputed questions of fact. And
01:15:23 11 as the Judge, I'll decide questions of law and procedure.

01:15:27 12 From time to time during the trial and at the end
01:15:30 13 of the trial, I'll instruct you on the law that you must
01:15:35 14 follow in making your decision.

01:15:37 15 Very soon the lawyers for each side will make what
01:15:41 16 is called an opening statement. Opening statements are
01:15:45 17 meant to help you understand the evidence. However, what
01:15:49 18 the lawyers say during their opening statements is not
01:15:53 19 evidence. It's only what they expect the evidence to show.

01:15:56 20 You should base your decision only on the evidence
01:16:00 21 that you hear and that comes in from the witness stand into
01:16:04 22 evidence through depositions and from the exhibits that I
01:16:11 23 have admitted into evidence.

01:16:11 24 You will rely on this evidence in making your
01:16:15 25 decision as to the verdict in this case.

01:16:17 1 The party who brings a lawsuit is called the
01:16:21 2 Plaintiff, and the Plaintiff in this case is Lone Star
01:16:26 3 Technological Innovations, LLC, who will be referred to as
01:16:28 4 Plaintiff or Lone Star during the trial.

01:16:30 5 The party against whom the suit is brought is
01:16:33 6 called the Defendant, and in this action the Defendant is
01:16:39 7 ASUSTeK Computer, Inc., who will be referred to as the
01:16:43 8 Defendant or ASUS during the trial.

01:16:46 9 As I told you during voir dire this morning, this
01:16:49 10 is a case of alleged patent infringement. After the
01:16:54 11 opening statements, Lone Star will call witnesses and
01:16:57 12 present evidence, and then ASUS will have an opportunity to
01:17:01 13 call witnesses and present evidence.

01:17:03 14 After the parties' main cases are completed, Lone
01:17:09 15 Star may be permitted to present what is called rebuttal
01:17:12 16 evidence. After all of the evidence is in, I will instruct
01:17:15 17 you on the applicable law, and I will give you detailed
01:17:20 18 instructions, both orally as I am doing now, and at the end
01:17:25 19 of the case you will also have written instructions to take
01:17:28 20 with you to the jury room.

01:17:30 21 After I have given you your final instructions,
01:17:33 22 after all of the evidence is in and after you have heard
01:17:37 23 those instructions, then you will hear the closing
01:17:41 24 arguments of the party -- of the parties. And after you
01:17:45 25 have heard their closing arguments, then and only then will

01:17:51 1 you retire to the jury room to start discussing the case to
01:17:54 2 deliberate and to reach a verdict.

01:17:56 3 Throughout the course of the trial, I want you to
01:17:58 4 keep an open mind. Don't decide any fact until you have
01:18:02 5 heard all of the evidence, then the closing arguments, and
01:18:06 6 then my instructions.

01:18:08 7 You should pay close attention to the evidence and
01:18:13 8 the testimony. If you would like to take notes during the
01:18:15 9 trial, you may do so. And we've got some notebooks that --
01:18:20 10 do you have your notebooks yet? Okay.

01:18:23 11 You can make notes in your notebooks any time you
01:18:27 12 want to. And if you decide to do that, be careful not to
01:18:30 13 get so involved in your note taking that you become
01:18:33 14 distracted or miss part of the testimony. You don't need
01:18:37 15 to write down everything that happens. Just take the notes
01:18:40 16 that you feel are appropriate or would be helpful to you.

01:18:44 17 Your notes, however, are only to be used as an aid
01:18:49 18 to your memory. And if later your memory is different from
01:18:52 19 your notes, you should rely upon your memory and not your
01:18:56 20 notes. Just because something gets written down on the
01:18:59 21 note pad doesn't make it any more important than your own
01:19:04 22 recollection or another person's recollection.

01:19:07 23 So don't be influenced by any notes that either
01:19:10 24 you take or someone else takes. A juror's notes are not
01:19:15 25 entitled to any greater weight than the recollection of

01:19:19 1 each juror concerning the testimony.

01:19:25 2 Now, we do have a court reporter who is present
01:19:26 3 and taking down stenographic notes in the courtroom, but a
01:19:30 4 copy of that testimony will not be available for your use
01:19:33 5 during deliberations.

01:19:35 6 On the other hand, any exhibits that are
01:19:37 7 introduced into evidence, that would be documents and other
01:19:40 8 physical evidence, will be available for you during your
01:19:47 9 deliberations.

01:19:48 10 Now, my next instruction is very important. Our
01:19:53 11 Constitution guarantees a trial by an impartial jury, and
01:19:57 12 that means that you as jurors must decide the case solely
01:20:03 13 based on the evidence that's presented here in the
01:20:07 14 courtroom and on the law that I give to you that you must
01:20:12 15 follow in your deliberations.

01:20:13 16 Until all of the evidence has been presented and
01:20:15 17 the arguments have been made and I have given you
01:20:18 18 instructions, you may not discuss this case with anyone,
01:20:21 19 even your fellow jurors.

01:20:23 20 So when you go to lunch or you take a break, you
01:20:27 21 all feel free to talk about whatever you want to, just
01:20:30 22 don't talk about the case.

01:20:32 23 After you begin your deliberations, of course, you
01:20:40 24 can discuss the case with your fellow jurors, but you can't
01:20:46 25 discuss it with anyone else until the very end and the case

01:20:49 1 is over with and I have released you from that restriction.

01:20:53 2 So during the trial, you may also not conduct any
01:21:04 3 independent investigation about the case or the matters or
01:21:12 4 legal issues, attorneys involved in the case. Don't learn
01:21:15 5 anything -- don't try to learn anything about the case from
01:21:17 6 any outside source. And that's very important.

01:21:20 7 The bottom line for the important work you're
01:21:23 8 going to be doing as jurors is that you have to base your
01:21:26 9 verdict only on the testimony that has been given under
01:21:30 10 oath that complies with the rules of evidence we are
01:21:34 11 required to follow and the exhibits that have been legally
01:21:37 12 admitted into evidence here in the courtroom, along with
01:21:43 13 the instructions that I give you about the law. So don't
01:21:45 14 go to any other source to receive information, don't read
01:21:50 15 anything in the newspaper or listen to anything on the
01:21:56 16 radio or watch television.

01:21:59 17 If something should appear there, and as I said
01:22:03 18 before, I think it's unlikely it will, but if it does, just
01:22:07 19 don't read the article, don't watch the article or
01:22:09 20 listen -- don't watch the story or listen to the radio
01:22:13 21 report.

01:22:15 22 Don't use the Internet or Google to find out any
01:22:19 23 information about the case or the parties or the attorneys.
01:22:22 24 So don't go home and try to do your own investigation about
01:22:25 25 the facts of the case. That would be extremely improper.

01:22:30 1 And the reason, again, is very important. It
01:22:35 2 would violate your oath as a juror because you would be
01:22:39 3 considering something other than the evidence that has been
01:22:42 4 presented here in the courtroom. And if that were to
01:22:47 5 happen, it could result in a mistrial.

01:22:52 6 There's been an enormous amount of time and effort
01:22:54 7 and expenditures by the parties to get this case to this
01:22:59 8 point. And if you were to engage in behavior like that, it
01:23:03 9 potentially could jeopardize getting a verdict. So please
01:23:15 10 remember that rule.

01:23:16 11 I will remind you about these rules throughout the
01:23:19 12 course of the case and I do that, of course, not because I
01:23:22 13 have any concern about your ability to follow those rules
01:23:25 14 but just to emphasize their importance.

01:23:27 15 I told you earlier you can't talk to anybody, and
01:23:35 16 that includes your family and your friends. So in the
01:23:40 17 evenings you can't talk to them about the case. I -- I
01:23:46 18 think it's unlikely to happen, but if someone should
01:23:51 19 approach you to talk to you about the case, you should
01:23:57 20 refuse to do so and inform me immediately.

01:24:01 21 You should also not allow the case to be discussed
01:24:04 22 in your presence. And that means during a trial like this,
01:24:11 23 kind of holding yourself apart from anybody, except your
01:24:16 24 fellow jurors, who you run into in the courthouse, in the
01:24:20 25 halls, in the elevators waiting to go through the security

01:24:25 1 line in the morning.

01:24:26 2 It is important for you not only to be fair and
01:24:30 3 impartial but also to appear to be fair and impartial. So
01:24:37 4 that is an important rule I'll ask you to follow, as well.

01:24:41 5 The attorneys and the parties are all very
01:24:46 6 personable, nice folks, and I'm sure they would like
01:24:51 7 nothing other than to visit with you while you're in the
01:24:53 8 courthouse, but they're following my rules in this regard
01:24:56 9 and so they won't be speaking to you. And they're doing
01:24:59 10 that not because they are rude or impolite or anything like
01:25:04 11 that, but just they know what my rules are in this regard,
01:25:08 12 and they're certainly going to want to follow those.

01:25:12 13 So you will have a juror badge on throughout the
01:25:15 14 course of the trial and -- so people will know who you are
01:25:21 15 and they should not be approaching you.

01:25:24 16 Now, we all use smartphones and tablets and
01:25:33 17 computers in our daily lives. You can't communicate with
01:25:38 18 anyone about the case at all. Don't post any updates on
01:25:41 19 any social networking site or anything like that. No
01:25:47 20 tweets on Twitter or status updates on Facebook. No
01:25:53 21 mention about the case on any kind of site. Don't text
01:25:58 22 anyone about anything or email anyone about this case for
01:26:00 23 the same reason I gave you before. It could potentially
01:26:04 24 result in a waste of a lot of time and expense that
01:26:07 25 everybody has put into getting the case ready to trial. So

01:26:10 1 I'll ask you to follow that instruction very carefully.

01:26:14 2 As I told you before we broke for lunch, there
01:26:17 3 will be occasions when I have to visit with the attorneys
01:26:21 4 outside your presence. I'll try to keep those times to a
01:26:25 5 bare minimum. We'll be here in the morning to deal with
01:26:30 6 things, we'll deal with things over the lunch hour, and at
01:26:33 7 the conclusion of the day, after you have left, but they
01:26:36 8 are an inevitable part of any trial. And it almost
01:26:41 9 certainly will happen that we ask you to wait for us in the
01:26:44 10 jury room while we resolve some legal or evidentiary
01:26:50 11 matter.

01:26:51 12 I'd ask you not to speculate or worry about what
01:26:55 13 we're discussing outside of your presence, and I'll ask you
01:26:59 14 for your patience in the event you do have to wait.

01:27:02 15 All right. Let me explain to you a little bit
01:27:06 16 about the parties and the nature of the case. It is a
01:27:09 17 patent case, and it involves a patent that's been
01:27:13 18 identified as U.S. Patent No. 6,724,435. And that patent
01:27:19 19 will also be known throughout this trial by its last three
01:27:24 20 digits, the '435 or the '435 patent.

01:27:28 21 Generally, the patent relates to technology for
01:27:31 22 color control for digital video images. Lone Star contends
01:27:42 23 that certain ASUS products infringe Claims 1, 2, 3, 5, 6,
01:27:47 24 13, 14, and 15 of the '435 patent, and these claims will be
01:27:51 25 referred to as what we call asserted claims. Lone Star

01:27:56 1 also contends that it is entitled to damages as a result of
01:28:01 2 this alleged infringement.

01:28:03 3 ASUS -- or ASUS denies that it has infringed the
01:28:07 4 asserted claims of the '435 patent, and it contends that
01:28:11 5 the patent is invalid. It further contends that Lone Star
01:28:15 6 is not entitled to damages.

01:28:18 7 Now, all of this may sound like Greek to you. I
01:28:22 8 know it's a lot of new words that are thrown at you. I
01:28:27 9 will define a lot of the words for you as we go through the
01:28:30 10 instructions, and the attorneys will discuss them with you
01:28:33 11 in their opening statements. And the witnesses are going
01:28:38 12 to help you understand the words. So don't feel
01:28:42 13 overwhelmed at this point. You're going to get a lot of
01:28:44 14 education this week and a lot of help from the attorneys
01:28:47 15 and the witnesses for both sides.

01:28:49 16 I do want to explain to you a little bit about our
01:28:53 17 patent system generally in the United States. You saw the
01:28:55 18 video this morning before jury selection.

01:28:59 19 Patents are issued by the Patent and Trademark
01:29:02 20 Office, which is part of the United States government. The
01:29:06 21 government is empowered by our Constitution to enact patent
01:29:11 22 laws and to issue patents to protect inventions.

01:29:15 23 Inventions that are protected by patents may be
01:29:18 24 products, compositions, or methods for doing something or
01:29:24 25 for using or making a product or a composition.

01:29:28 1 The purpose of the patent system is to help
01:29:31 2 advance science and technology, and it -- our system
01:29:40 3 achieves this purpose by granting to the owner of the
01:29:43 4 patent the right for the term of the patent to exclude any
01:29:47 5 other person from making, using, offering for sale,
01:29:51 6 selling, or importing the invention covered by the patent
01:29:54 7 anywhere in the United States.

01:29:55 8 A patent is granted for a set period of time.
01:29:58 9 Once a patent expires, the invention then becomes part of
01:30:03 10 what we call the public domain, which means that anyone is
01:30:07 11 free to use it, and the patent owner may no longer exclude
01:30:11 12 anyone from making use of the invention that is claimed in
01:30:15 13 the patent.

01:30:16 14 During the term of the patent, however, if another
01:30:20 15 person without the patent owner's permission makes, uses,
01:30:25 16 sells, offers to sell, or imports into the United States
01:30:28 17 something that is covered by the claims of the patent, then
01:30:31 18 that person is said to infringe the patent.

01:30:34 19 The patent owner may enforce a patent against
01:30:38 20 persons or companies believed to be infringers in a lawsuit
01:30:44 21 in federal court just as in this case. The law does not
01:30:47 22 require that the patent owner give advance notice to a
01:30:51 23 Defendant that the Plaintiff intends to file suit.

01:30:55 24 Everyone, however, has the right to use existing
01:31:00 25 knowledge and principles. A patent cannot remove from the

1 public the ability to use what was known or obvious before
2 the invention was made or patent protection was sought.

3 Thus, to be entitled to patent protection, an
4 invention must be new, useful, and nonobvious.

5 To obtain a patent, the applicant must file a
6 patent application with the United States Patent Office.

7 After the applicant files this application, a patent
8 examiner exams the application to determine whether the
9 invention described in the patent application meets the
10 requirements of the patent laws for patentable inventions.

11 If the examiner concludes that the legal
12 requirements for a patent have all been satisfied, he or
13 she allows the claims, and the application issues as a
14 patent.

15 The process from the filing of the application to
16 the issuance of a patent is called patent prosecution. The
17 record of papers that is related to the patent prosecution
18 is referred to as prosecution history or file history.

19 The granting of the patent by the Patent Office
20 carries with it the presumption that the patent is valid.

21 From the issuance of a patent, it is presumed that
22 its subject matter is new, useful, and constitutes an
23 advance that was not at the time the invention was made
24 obvious to one of ordinary skill in the art. However, that
25 presumption may be rebutted at trial, and you, the finder

01:32:46 1 of fact, may find the patent to be invalid.

01:32:50 2 I want to instruct you about the significance of
01:32:53 3 the patent claims.

01:32:54 4 The claims of a patent are the main focus of a
01:32:59 5 patent case because the claims are what define the patent
01:33:03 6 owner's rights under the law. That is, the claims define
01:33:08 7 what the patent owner may exclude others from doing during
01:33:12 8 the term of the patent.

01:33:13 9 The claims of a patent serve two purposes. First,
01:33:18 10 they set the boundaries of the invention covered by the
01:33:23 11 patent, and, second, they provide notice to the public of
01:33:27 12 those boundaries.

01:33:29 13 Thus, when a method is accused of infringing a
01:33:32 14 patent, the patent claims are compared to the accused
01:33:36 15 method to determine whether there is infringement. The
01:33:40 16 claims of the patent are what infringed when patent
01:33:44 17 infringement occurs -- or are what are infringed when
01:33:47 18 patent infringement occurs because the claims define what
01:33:51 19 the invention is.

01:33:52 20 In researching your determinations with respect to
01:33:56 21 infringement, you must consider each claim separately.

01:34:00 22 Now, when claims define the invention, sometimes
01:34:03 23 there's disagreement between the parties as to what certain
01:34:06 24 words or terms in the claims mean. And when this happens,
01:34:10 25 they ask the Court to interpret those terms in light of the

01:34:14 1 patent as a whole, and this is to help solve their
01:34:20 2 disagreement and to give you, the jury, guidance in
01:34:23 3 applying the claims to the facts of the case.

01:34:26 4 This happened in this case, and at some time prior
01:34:30 5 to the trial, we had a hearing, and I heard arguments and
01:34:33 6 then rendered a claim interpretation of the disputed terms.

01:34:36 7 My interpretation of the language of the claims
01:34:40 8 should not be taken as an indication by you that I have a
01:34:44 9 personal opinion or any opinion at all regarding issues
01:34:49 10 such as infringement. Those issues are yours alone to
01:34:54 11 decide. But you must use the meanings when you decide the
01:34:58 12 issues of infringement.

01:35:00 13 I want to give you some information about the
01:35:03 14 issue that will be presented to you in the trial, as well
01:35:07 15 as a short overview of the applicable law.

01:35:11 16 At the close of the trial, I will give you some
01:35:14 17 specific instructions that you must follow in reaching your
01:35:17 18 verdict, and you will also be given a verdict form and
01:35:22 19 questions that you must answer in providing your verdict.

01:35:26 20 All of that will happen at the very end of the
01:35:28 21 case, but I want you to understand and provide you with
01:35:31 22 some instructions that will help you -- that you will need
01:35:36 23 to follow in deciding the case.

01:35:37 24 We talked this morning, the attorneys did, about
01:35:41 25 some burdens of proof.

01:35:43 1 In any legal action, the facts are -- the facts
01:35:47 2 are proven by a acquired standard of evidence that is known
01:35:51 3 as the burden of proof. And as I told you before -- or the
01:35:56 4 attorneys may have mentioned, you may have heard about it
01:36:01 5 in connection with a criminal case, the burden of proof
01:36:05 6 that is called proof beyond a reasonable doubt is not used
01:36:11 7 in this case or any other civil case. That's used in
01:36:15 8 criminal cases.

01:36:16 9 In this case, Lone Star must prove its claims of
01:36:20 10 patent infringement and damages by what we call a
01:36:25 11 preponderance of the evidence. And when a party has the
01:36:28 12 burden of proof by a preponderance of the evidence, it
01:36:36 13 means that you must be persuaded that what the party seeks
01:36:41 14 to prove is more probably true than not true.

01:36:44 15 Put another way, if you were to put the evidence
01:36:48 16 for and against the party into scales -- opposite sides of
01:36:53 17 the scales, preponderance of the evidence means that the
01:36:57 18 scale must tip at least somewhat toward the party who has
01:37:01 19 the burden of proof.

01:37:02 20 ASUS -- or ASUS has the burden of proving
01:37:09 21 invalidity by clear and convincing evidence, and that means
01:37:14 22 evidence that produces in your mind a firm belief or
01:37:17 23 conviction as to the matter at issue.

01:37:21 24 Although proof to an absolute certainty is not
01:37:27 25 required, clear and convincing evidence does require a

01:37:30 1 greater degree of persuasion than is necessary for the
01:37:35 2 burden -- for the preponderance of the evidence standard.
01:37:39 3 If the proof establishes in your mind a firm belief or
01:37:44 4 conviction, then that standard has been met.

01:37:50 5 Again, the standard that is called beyond a
01:37:53 6 reasonable doubt is one that is used in criminal cases, and
01:37:57 7 you should put it out of your mind.

01:37:59 8 Now, let me visit with you about your duties as
01:38:03 9 jurors.

01:38:04 10 You really will have two duties as jurors. The
01:38:11 11 first is to decide the facts based upon the evidence that
01:38:14 12 is presented. That is your job and your job alone.

01:38:17 13 Your second duty is to apply the law as I give it
01:38:21 14 to you to those facts that you find. You must follow those
01:38:25 15 instructions on the law even if you disagree with them.

01:38:29 16 Each of the instructions that I have given you now
01:38:33 17 and the instructions I will give you at the end of the
01:38:36 18 trial are important, and you must follow all of those.

01:38:39 19 I want you to do that, and I know that you will do
01:38:43 20 that, because it is important for you to be able to perform
01:38:47 21 your duties fairly and impartially. You should not allow
01:38:53 22 sympathy, prejudice, fear, public opinion, or anything else
01:38:56 23 to influence you in any way.

01:39:00 24 Nothing that I have said this morning, this
01:39:02 25 afternoon, or at any part during the trial is meant to

01:39:09 1 indicate in any way any opinion on my part about what I
01:39:13 2 believe the facts are or what I believe your verdict should
01:39:16 3 be. Again, you, the jury, will be the sole judges of the
01:39:23 4 facts in this case.

01:39:25 5 You will hear testimony from a number of witnesses
01:39:29 6 in the case. Some of them will be here present in the
01:39:33 7 courtroom. But some have not been able to travel from
01:39:37 8 their homes for medical or other reasons concerning the
01:39:42 9 pandemic. And you will see those witnesses who testify
01:39:50 10 remotely through screens, the screen in the courtroom. And
01:39:55 11 you should give those witnesses the same -- or you should
01:40:01 12 examine their testimony according to the same weight and
01:40:05 13 credibility as you would any other witness, and you should
01:40:08 14 consider their testimony as if they were here, present in
01:40:12 15 the courtroom and testifying in the courtroom.

01:40:19 16 All right. That concludes my opening instructions
01:40:21 17 for you.

01:40:22 18 I have given you some logistical information about
01:40:26 19 what your trial day will be like, so you have a general
01:40:30 20 idea of what to expect as the trial proceeds.

01:40:34 21 And with those preliminary comments, at this time,
01:40:37 22 the Plaintiff may present its opening statement.

01:40:44 23 MR. SABA: Thank you, Your Honor. May it please
01:40:54 24 the Court. Counsel.

01:40:56 25 Ladies and gentlemen, good afternoon.

01:40:59 1 As Americans and Texans, we have to respect the
01:41:04 2 property rights of others, and when someone takes another
01:41:09 3 property right without permission, we have a legal system
01:41:11 4 in place to correct that. And, ladies and gentlemen, that
01:41:16 5 is why you have been called today.

01:41:17 6 We are here today because Defendant, ASUS, has
01:41:21 7 wrongfully used and continues to use Lone Star's
01:41:25 8 technology. My name is John Saba. I'm a lawyer
01:41:32 9 representing Plaintiff, Lone Star, over here. I was born
01:41:34 10 and raised in Dallas and now live in Austin. And I want to
01:41:39 11 thank all of you for your time serving in this case today.

01:41:42 12 This is a patent infringement case. Plaintiff,
01:41:44 13 Lone Star, owns a patent on display technology. And
01:41:47 14 Defendant, ASUSTeK, a Taiwanese company, has infringed on
01:41:52 15 that patent.

01:41:53 16 You may or may not be familiar with patents.
01:41:56 17 Patents are granted for inventions. It's a property right,
01:42:00 18 an intellectual property right granted by the
01:42:04 19 U.S. government for an invention. And the owner of a
01:42:06 20 patent owns the rights to the invention.

01:42:08 21 Intellectual property rights are no different than
01:42:12 22 regular property rights. If you own a piece of property,
01:42:15 23 like your home, then you have the right to control that
01:42:18 24 property. You can control who comes on and off your
01:42:22 25 property, you can charge rent if you want to rent it out,

01:42:25 1 and if you own a patent, then you have the right to control
01:42:28 2 how that invention is used. Be it real property or
01:42:33 3 intellectual property, it's essentially the same.

01:42:37 4 Over the course of the next few days, you're going
01:42:40 5 to hear a fair amount of technology, displays and monitors
01:42:46 6 and color changes, and while some of that may seem
01:42:50 7 complicated, this case is really quite simple. The
01:42:53 8 evidence will show that this case really comes down to
01:42:57 9 three things.

01:42:59 10 Number one, Lone Star owns United States -- a
01:43:03 11 United States patent for an invention to make color
01:43:05 12 correction changes on displays, monitors, and televisions,
01:43:09 13 an invention that essentially has made its way into many,
01:43:13 14 many modern televisions, monitors and displays.

01:43:17 15 Number two, ASUS infringes on that patent. ASUS
01:43:23 16 sells monitors and displays in this country that contain
01:43:26 17 the patented invention color-changing technology. And the
01:43:30 18 evidence will show that Lone Star's expert, who we'll talk
01:43:35 19 about more in a second, tells you how the products infringe
01:43:39 20 because he tested the products, he reviewed the ASUS
01:43:42 21 product manuals and other technical documents, and he even
01:43:46 22 reviewed the source code on the chips contained in some of
01:43:50 23 the ASUS displays. ASUS even advertises the infringing
01:43:55 24 technology themselves.

01:43:56 25 And, number three, Lone Star is entitled to

01:44:00 1 damages.

01:44:01 2 And, ladies and gentlemen, that is why you're
01:44:03 3 here, and I want to talk to you briefly about each of
01:44:07 4 these.

01:44:07 5 Lone Star is a Texas company which owns the patent
01:44:12 6 at issue in this matter. The patented invention involves
01:44:15 7 the ability to change individual colors on a display.

01:44:18 8 Specifically, Lone Star owns U.S. Patent
01:44:27 9 No. 6,724,435.

01:44:28 10 And as Judge Schroeder informed you, we
01:44:32 11 refer -- we'll be referring to the patent as the '435
01:44:35 12 patent throughout this week. That's the last three digits
01:44:40 13 of the registration number.

01:44:42 14 The patent is titled: Method for Independently
01:44:47 15 Controlling Hue Or Saturation of Individual Colors in a
01:44:48 16 Real Time Digital Video Image. The '435 patent describes
01:44:52 17 an invention that you're probably already familiar with.
01:44:55 18 The evidence will show it's an important feature in many,
01:45:00 19 if not all, modern televisions and displays. And it
01:45:05 20 teaches, as we say in patent law, the concept of changing
01:45:08 21 an individual color without changing the other colors.

01:45:11 22 In order to understand the importance of the
01:45:15 23 invention, I want to talk to you a little bit about the
01:45:19 24 problem that existed before the patent was invented. And
01:45:23 25 before I do, I need to tell you a little about some terms

01:45:26 1 that you're going to hear about this week, terms that I
01:45:29 2 learned from taking this case on -- and like, for example,
01:45:33 3 hue or saturation of a color. I had no idea what those
01:45:36 4 terms meant.

01:45:37 5 Hue is the shade of color or tint.

01:45:41 6 Saturation is the intensity of color.

01:45:44 7 So let me explain to you the problem that existed.
01:45:47 8 In the early 2000s, before the patented invention, a user
01:45:52 9 was only able to change the hue or saturation of all the
01:45:57 10 colors on a monitor. It was all or nothing. You couldn't
01:46:03 11 change one color.

01:46:04 12 And so on the far left, you see the picture of the
01:46:07 13 television that looks like it's in black and white. That's
01:46:11 14 without any saturation whatsoever. That's an unsaturated
01:46:16 15 photo. And as saturation is increased, you get the super
01:46:20 16 vividness over there on the right.

01:46:21 17 But what was needed was the ability to select one
01:46:26 18 color and change that color without changing the other
01:46:29 19 colors. For example, this picture of a parrot, if you
01:46:32 20 wanted to change the hue of blue to green, there needed to
01:46:37 21 be a way to do that. So here, you see the picture of a
01:46:41 22 parrot with blue feathers, and then it changes to green,
01:46:45 23 but the yellow feathers don't change.

01:46:48 24 The problem of color changing technology becomes
01:46:53 25 more complex when we're talking about televisions and

01:46:56 1 monitors, i.e., videos. And let me use this as an example.
01:47:02 2 Because I'm from Dallas, I'm a lifetime Cowboys fan. This
01:47:09 3 is a picture of Roger Staubach. Assume for purposes of
01:47:16 4 this example, that this is a 60-second YouTube clip of
01:47:21 5 Roger Staubach. In order for this image to be displayed,
01:47:25 6 just a still image to be displayed, it typically requires
01:47:29 7 about 2 million pixels of data.

01:47:32 8 So that picture, without any playing, consists of
01:47:36 9 about 2 million pixels of data, which are the color dots on
01:47:42 10 that screen. Every video or most videos have about 30 to
01:47:46 11 60 frames per second. So that means for one second of
01:47:49 12 video, we're talking about 50 million -- approximately 50
01:47:53 13 million pixels of data. And that's a lot of data.

01:47:59 14 So if I wanted to change the blue in
01:48:01 15 Mr. Staubach's jersey, I have to essentially sift through
01:48:04 16 about 50 million pixels of data. Now you have an idea of
01:48:10 17 how complicated the problem is.

01:48:13 18 The '435 invention solved it with the ability to
01:48:18 19 change hue or saturation of one individual color without
01:48:22 20 changing the other colors. The invention was appealing to
01:48:27 21 so many, but nowadays it is -- it became more or less a
01:48:32 22 standard feature.

01:48:33 23 When we talk about patents, we talk about patent
01:48:39 24 claims. And patent claims define the boundaries of the
01:48:46 25 invention just like a fence line -- just like a fence line

01:48:54 1 puts the metes and bounds on any boundary of real estate.
01:49:00 2 All right. And this is a copy of the patent that my
01:49:03 3 co-counsel was talking about this morning. And it's
01:49:07 4 about 18 pages long.

01:49:08 5 To get to the claims, you go to the back, and it
01:49:11 6 says: What is claimed, Number 1. And it starts off: A
01:49:15 7 method of independently controlling hue or saturation,
01:49:20 8 these steps consisting of. And I want to talk to you very
01:49:24 9 briefly about that because you're going to be hearing more
01:49:27 10 about Claim 1, which is the primary claim.

01:49:30 11 Now, Claim 1 may seem like a lot of information,
01:49:33 12 but if you break it down into five steps, it's not that
01:49:36 13 complicated. And you're going to hear Plaintiff, Lone
01:49:39 14 Star, talk all about the Claim 1 steps.

01:49:41 15 The first step of Claim 1, Step 1(a), is:
01:49:45 16 Receiving and characterizing the digital input image. That
01:49:50 17 is getting a signal. Whether your television or monitor is
01:49:54 18 plugged into cable, whether it's plugged into a computer,
01:49:56 19 it's getting a signal from something.

01:49:58 20 Step 1(b): Selecting to independently change the
01:50:04 21 hue or saturation. That is the monitor or display's
01:50:07 22 ability to change one color. We're going to talk about
01:50:10 23 that more in a second.

01:50:11 24 Three: Identifying a plurality of input image
01:50:19 25 pixels containing that color range.

01:50:22 1 Four: Determining the output image pixel values.

01:50:29 2 And, five: Displaying the image.

01:50:31 3 The evidence will show that ASUS's products also
01:50:36 4 do these five steps.

01:50:38 5 The evidence will show that typically this color
01:50:41 6 changing feature is included on displays, and what we'll
01:50:45 7 refer to during the trial as an on-screen display. An
01:50:49 8 on-screen display or OSD is usually -- this is an example
01:50:53 9 of a monitor -- is usually hued from one of the buttons on
01:51:00 10 the display itself.

01:51:02 11 So, for example, if there's an on/off button and
01:51:04 12 some selection buttons, you pull it up and you see a menu
01:51:06 13 similar to that, and then you can effectuate a number of
01:51:10 14 changes, including selecting the input, changing hue or
01:51:15 15 saturation, et cetera.

01:51:15 16 And the devices at issue in this case regard what
01:51:19 17 we'll refer to as 6-axis color control or 3-axis color
01:51:28 18 control. 3-axis is red, green, and blue. 6-axis is red,
01:51:36 19 green, blue, cyan, magenta, and yellow.

01:51:48 20 Let's talk about Point No. 2. ASUS is a large
01:51:50 21 computer and display manufacturer located in Taiwan,
01:51:53 22 Republic of China.

01:51:54 23 Now, you may or may not be familiar with ASUS or
01:51:56 24 its brands. ASUS sells a number of computer -- excuse me,
01:52:00 25 consumer electronic products here in the United States.

01:52:02 1 The types that are at issue in this case are monitors or
01:52:05 2 displays, whichever you prefer to call them. And we'll
01:52:08 3 refer to those products throughout the trial as the accused
01:52:12 4 products.

01:52:12 5 The evidence will show that the accused products
01:52:15 6 infringe on the patent because they include functionality
01:52:18 7 for a user to change individual color without affecting
01:52:25 8 other colors.

01:52:26 9 ASUS does not have permission to use the patented
01:52:29 10 technology in their products. Unlike other display
01:52:32 11 companies that actually have a license to use the patented
01:52:35 12 technology, like Sharp, Acer, and NEC, ASUS does not, and
01:52:41 13 therefore is liable for patent infringement.

01:52:42 14 There are approximately 135 accused product
01:52:52 15 families at issue in this lawsuit, all displays, and all of
01:52:57 16 the ASUS products are sold in the United States for
01:53:00 17 millions of dollars.

01:53:01 18 And the evidence will show, ladies and gentlemen,
01:53:04 19 that ASUS advertises on its website the patented
01:53:12 20 technology. You're going to be presented with
01:53:15 21 Plaintiff's 14 -- Exhibit 14, pardon me, where ASUS
01:53:19 22 advertises on its website 6-axis independent color
01:53:26 23 adjustment, customized hue or saturation control with 6
01:53:30 24 color adjustment allows you to adjust 6 colors
01:53:33 25 independently without affecting the other colors.

01:53:37 1 THE COURT: Mr. Saba, hold on just one moment.

01:53:39 2 MR. OLIVER: Your Honor, this is one of the slides
01:53:41 3 that we objected to and were told was changed for the
01:53:44 4 presentation.

01:53:45 5 MR. SABA: Your Honor, I don't believe this slide
01:53:48 6 was objected to in our opening. I think it was objected to
01:53:52 7 in Dr. Ducharme's. And it's Plaintiff's 14, as I told
01:53:57 8 Mr. Oliver yesterday.

01:53:58 9 MR. OLIVER: I guess -- I believe we objected to
01:53:59 10 it. I'm not going to press the issue. We'll drop the
01:54:03 11 objection at this point. I do not think it's in
01:54:06 12 Exhibit 14, but I'll let him continue. I'm sorry.

01:54:10 13 MR. SABA: Thank you.

01:54:10 14 THE COURT: Continue.

01:54:11 15 MR. SABA: Ladies and gentlemen, you will be
01:54:15 16 presented at trial how the language of this advertisement
01:54:17 17 is nearly -- it's similar, if not identical, to the '435
01:54:22 18 patent.

01:54:22 19 Over the course of the next few days, you're going
01:54:26 20 to hear from several Lone Star witnesses, including Lone
01:54:29 21 Star's expert technical witness, Dr. Al Ducharme.
01:54:34 22 Dr. Ducharme is an expert in display technology. He's a
01:54:38 23 professor, a Ph.D. of electrical engineering where he
01:54:44 24 taught display technology at the University of Central
01:54:48 25 Florida. He has over 30 years of experience in the field

01:54:51 1 of display technologies.

01:54:53 2 Dr. Ducharme will testify on why the ASUS
01:54:55 3 products -- the accused products infringe on the patent.
01:54:58 4 He actually tested a -- two ASUS displays with
01:55:04 5 sophisticated color sensing equipment to confirm his
01:55:08 6 theories. He examined the source code on the display chips
01:55:17 7 in the accused products, and he reviewed technical
01:55:23 8 documentations and specifications.

01:55:26 9 Dr. Ducharme will testify that ASUS's products
01:55:28 10 infringe on the patented invention, and he will provide a
01:55:32 11 detailed analysis of how each step of each claim asserted
01:55:37 12 infringes on the '435 patent.

01:55:37 13 The evidence will show that the bottom line is if
01:55:41 14 the monitor can change one color at a time without changing
01:55:44 15 the other colors, it's using Lone Star's technology and
01:55:48 16 infringing Lone Star's patent.

01:55:49 17 You're going to hear from ASUS, as well, after the
01:55:57 18 Plaintiff rests in their case. ASUS is going to tell you
01:55:59 19 that their products don't infringe. The evidence that will
01:56:02 20 show that they're going to criticize Dr. Ducharme for only
01:56:07 21 testing a few products, but I will submit to you that you
01:56:12 22 don't need to eat all the cookies in the package to know
01:56:14 23 that they're chocolate chip.

01:56:19 24 They are going to criticize Dr. Ducharme's
01:56:21 25 analysis of the source code, but the evidence will show

01:56:23 1 that ASUS did not inspect the source code. At the end of
01:56:28 2 the day, Lone Star believes it will easily meet its burden
01:56:33 3 of proof to show infringement.

01:56:35 4 ASUS will also likely argue that the patent that
01:56:39 5 the United States government issued, the '435, is not
01:56:44 6 valid. And -- but as -- but as you heard this morning in
01:56:51 7 the video, a patent is presumed to be valid just like your
01:56:54 8 driver's license is presumed to be valid.

01:56:57 9 Finally, ASUS will probably argue that they don't
01:57:01 10 have to pay anything. But the evidence will show that if
01:57:06 11 you find infringement, that the -- the law -- the law
01:57:13 12 affords Lone Star what is called a reasonable royalty.

01:57:17 13 So after you decide infringement and validity, you
01:57:20 14 will then be asked to award a damages amount of no less
01:57:24 15 than a reasonable royalty.

01:57:25 16 You're going to hear from Lone Star's damages
01:57:28 17 expert, Mr. Glenn Perdue, who -- he will walk you through
01:57:33 18 his calculations to arrive at a reasonable royalty.

01:57:40 19 He's going to discuss something called a
01:58:01 20 hypothetical negotiation. It's a special construct, and
01:58:01 21 it's unlike a regular negotiation. In a hypothetical
01:58:01 22 negotiation, you will assume that the patent is infringed.
01:58:01 23 The evidence will show that it is. You assume that the
01:58:01 24 patent is valid. The evidence will show that it is. And
01:58:02 25 you will assume that ASUS wants the technology. The

01:58:04 1 evidence will show why else is it in their product.

01:58:08 2 And at the conclusion of evidence, we are going to
01:58:11 3 ask you to award Lone Star at least \$2.8 million for ASUS
01:58:20 4 infringing its intellectual property rights.

01:58:23 5 Thank you.

01:58:31 6 THE COURT: Okay. At this time, ASUSTeK may
01:58:34 7 present its opening statement.

01:58:36 8 MR. OLIVER: Can we switch the monitors to -- we
01:59:28 9 kept it plugged in when we tested it this morning. Should
01:59:28 10 we plug them into the cable that they used?

01:59:31 11 THE COURT: Yeah, why don't we try that.

02:00:38 12 MR. OLIVER: Thank you for your patience. I'm
02:00:40 13 sorry about that slight technical difficulty. Hopefully my
02:00:45 14 controller will work. Okay. Good.

02:00:49 15 Ladies and gentlemen, once again, I want to start
02:00:51 16 by thanking you for being here and thank you for your
02:00:55 17 service. I know there are places that you would rather be
02:00:58 18 than sitting in a courtroom listening to this exciting
02:01:02 19 patent case about monitors and color technology. But
02:01:06 20 because you're here, we really appreciate it and appreciate
02:01:09 21 what you're doing to help us reach justice.

02:01:13 22 As I said this morning, my name is Andrew Oliver.
02:01:17 23 I'm a lawyer for ASUS. My colleague, Vinay Joshi, is here
02:01:23 24 at the table with me. Michael McCarady, the ASUS
02:01:29 25 representative, is here from Dallas. Mr. McCarady is a

02:01:33 1 long-time Texan. And like I said, he refused to leave
02:01:37 2 Texas when ASUS asked him to move to Indiana. He's been
02:01:44 3 married for 30 years, has four kids, grandkids, Air Force
02:01:49 4 veteran, loves working for ASUS, and was able to move into
02:01:55 5 a job where he is managing a bunch of people in South
02:01:59 6 America and different places in the United States, serving
02:02:02 7 these products when somebody has a problem with them.

02:02:05 8 Jaime Morquecho is a witness that's going to be
02:02:09 9 appearing by video from California. He was planning to be
02:02:12 10 here, as well, had a very unfortunate family health
02:02:17 11 situation where his brother is essentially in terminal
02:02:24 12 illness and getting very close and he needs to be with his
02:02:27 13 brother, but he is going to testify by video.

02:02:29 14 Mr. Alvin Lin is going to testify from Taiwan by
02:02:38 15 video. He is not here because of COVID because once
02:02:42 16 somebody leaves Taiwan and then tries to step back in, they
02:02:45 17 have to go into a two-week quarantine where they're locked
02:02:49 18 up in their house or hotel for two weeks and can't do
02:02:52 19 anything else.

02:02:52 20 So you'll also see -- I'm going to ask the other
02:02:56 21 witnesses that are here to stand up.

02:03:02 22 Dr. Robert Stevenson, he's an electrical
02:03:06 23 engineering professor from Notre Dame. He'll be talking
02:03:13 24 about the technology that's at issue.

02:03:14 25 And Mr. Brett Reed is an economist, and he'll be

02:03:17 1 talking about the value of the patent when we get to that
02:03:20 2 point in the case.

02:03:27 3 I just wanted to put up here an image for you from
02:03:30 4 the ASUS website just to give you -- it might be hard to
02:03:33 5 read, but give you an idea.

02:03:34 6 Up at the top, you can see ASUS manufactures
02:03:36 7 mobile phones, laptops, displays, desktops, motherboards,
02:03:42 8 networking equipment, different computer accessories.

02:03:45 9 We have a few of them here. I've got some boxes
02:03:48 10 here that we'll show you at some point. We have a couple
02:03:51 11 of monitors here that we'll be showing. I'll use one of
02:03:56 12 those during the demonstration. We have got an ASUS
02:04:05 13 projector here that we'll also be showing you.

02:04:07 14 But the company is headquartered in Taiwan but is
02:04:13 15 a worldwide company, and they have about -- the testimony
02:04:18 16 you'll hear is that they have about 300 employees in the
02:04:22 17 United States. A good chunk of those are in California,
02:04:25 18 but the other employees are spread around, like
02:04:31 19 Mr. McCarty, and operate at different places in the
02:04:34 20 country.

02:04:34 21 I wasn't real familiar with ASUS until I went to
02:04:38 22 Taiwan once. My brother is a long-term missionary in
02:04:42 23 Taiwan, and I went to his wedding, and I saw the products
02:04:46 24 everywhere in Taiwan. They seem to be a big seller there.
02:04:50 25 They're not as big in the market here in the United States,

02:04:53 1 but you will see ASUS laptops or monitors from time to time
02:04:58 2 if you go to, say, a Walmart or a Best Buy or something
02:05:01 3 like that.

02:05:01 4 This case is a patent infringement case, and given
02:05:04 5 that it's a patent infringement case and it's about
02:05:07 6 monitors, you might be wondering why does this guy have a
02:05:12 7 picture of a gun up on the screen and a word like "hunting"
02:05:17 8 or "murderer" or something like that.

02:05:19 9 We're going to get into some complex technology,
02:05:23 10 and I want to give you an analogy that will help you center
02:05:27 11 this around something you're really familiar with.

02:05:29 12 When I was a kid, I grew up in a pretty small town
02:05:32 13 in Arizona, way smaller than Tyler. Just about everybody I
02:05:36 14 knew had a gun, and we knew that we had a right to have a
02:05:39 15 gun. People used it for hunting. People used it to go
02:05:44 16 target shooting. Some people had gun collections.

02:05:48 17 Where I lived, there wasn't much need for having a
02:05:50 18 gun to protect yourself. There wasn't a lot of crime, but
02:05:56 19 some people keep guns legally to protect themselves. And
02:05:59 20 while we know having a gun is legal, selling a gun, buying
02:06:03 21 a gun is legal, but there are certain things you can't do
02:06:06 22 with it. And one of the things that I put up there that I
02:06:09 23 thought of is you can't murder somebody.

02:06:13 24 Am I permitted to take the mask off?

02:06:15 25 THE COURT: Yes, you are. Yes.

02:06:16 1 MR. OLIVER: It's getting a little uncomfortable
02:06:18 2 to speak with the mask on.

02:06:19 3 Murdering is a method of using the gun, right?
02:06:23 4 You point it at someone, and you pull the trigger. That's
02:06:25 5 one way to use it.

02:06:27 6 Hunting is another way. You point it at something
02:06:31 7 else, not a person, and shoot.

02:06:34 8 Same with collecting, that's one way of using it.
02:06:36 9 You display it.

02:06:38 10 If this were a case about guns, the situation we
02:06:41 11 have here is Lone Star would be telling us you can't own
02:06:45 12 guns because having that gun is something that's not legal,
02:06:48 13 because what they're going to be telling you is selling
02:06:54 14 these ASUS products in the United States is enough to show
02:06:58 15 infringement. But it's not.

02:06:59 16 What they need to show is they need to show that
02:07:04 17 somebody actually uses a very specific, very obscure menu
02:07:09 18 item in the United States, and they won't show that.

02:07:11 19 And what I'm going to -- I'm going to tell you a
02:07:17 20 little bit about the claims of the patent.

02:07:19 21 As Mr. Saba showed you, the patent -- you'll have
02:07:25 22 a copy of this. It's got numbered claims in it. They're
02:07:30 23 numbered 1 to 38. And you will see claims starting at
02:07:35 24 Claims 17 to 38 that talk about the system, okay? That's a
02:07:40 25 claim on a monitor, a device itself.

02:07:45 1 If that claim were something we were considering,
02:07:48 2 actually selling the device could potentially infringe the
02:07:53 3 patent. But Claim 17 and all of the ones below it, 17
02:07:57 4 through 38, they're not at issue in this case. They have
02:08:01 5 been removed from the case.

02:08:04 6 So we're just talking about Claims 1 and a couple
02:08:08 7 of the other claims that talk about -- not a system but a
02:08:11 8 method. A method is a way of using a product. What's at
02:08:17 9 issue in this case is the particular way a product is used.

02:08:22 10 So, you know, briefly going back to the gun
02:08:25 11 analogy, having the gun, having the system is not at issue.
02:08:32 12 It's the question of how you use it. Everybody can have a
02:08:35 13 gun; nobody can murder someone.

02:08:39 14 Here, everybody can have this monitor. Nobody can
02:08:43 15 use it in a very particular way. What I want you to listen
02:08:47 16 for is evidence that people in the United States use that
02:08:51 17 and there's -- and whether there's evidence that anybody
02:08:55 18 uses that method, because there won't be evidence of that.

02:08:59 19 Now, I want to talk to you a little bit more about
02:09:02 20 the technology, and to do that, I want to talk a little bit
02:09:07 21 about pixels on the monitor.

02:09:09 22 When you look at a computer monitor, you see an
02:09:11 23 image, that image is made up of millions of dots. Each of
02:09:15 24 those dots, if you got out a magnifying glass and you
02:09:19 25 looked at it, each of them would have a blue, a red, and a

02:09:24 1 green component, little crystals -- crystals change when
02:09:28 2 electrical voltages are applied to them. They change how
02:09:32 3 much light they let through.

02:09:33 4 And those three little crystals make up a pixel,
02:09:38 5 and then each -- you know, they can be changed in intensity
02:09:43 6 to vary the color. A lot of red and no blue or green means
02:09:47 7 it looks red. A lot of blue and no red or green means it
02:09:51 8 looks blue. And mixing them, you can show millions -- in
02:09:57 9 fact, some monitors, I can't even comprehend it, but some
02:10:00 10 monitors can show billions of colors, and I didn't even
02:10:06 11 know there were such things as billions of colors.

02:10:09 12 But this is some background for you because you're
02:10:12 13 going to hear a lot of talk about changing red, green, or
02:10:19 14 blue, but the important thing is -- in this case to focus
02:10:22 15 on is the menus. And we've already seen some menus.

02:10:28 16 This is what Lone Star is calling a 6-axis and
02:10:31 17 ASUS calls a 6-axis menu. And you can see at the top of
02:10:35 18 that menu on the right, it says 6-axis hue, and it says
02:10:38 19 6-axis saturation. And I will flip forward to the
02:10:41 20 saturation selection.

02:10:43 21 You can -- as I go back and forth, you can see
02:10:46 22 somebody can move between hue and saturation, and they can
02:10:49 23 also move to something called gain which is a completely
02:10:53 24 different thing.

02:10:55 25 And then they can choose one of those colors:

02:10:58 1 red, green, blue, cyan, which is kind of an aqua blue,
02:11:01 2 magenta, which is almost purple, and, yellow, which we all
02:11:10 3 know. And they can adjust components of that in the 6-axis
02:11:14 4 menu.

02:11:15 5 Those menus only appear in these ProArt, which are
02:11:20 6 essentially professional artist products. And one of the
02:11:23 7 ProArt products, if you look up at the upper left, you can
02:11:27 8 see "PA" for ProArt.

02:11:29 9 The ProArt products have the 6-axis menu that Lone
02:11:33 10 Star is focused on. Those ProArt products are
02:11:37 11 about 2 percent of these dollars that ASUS makes off of its
02:11:43 12 sales. So Lone Star's case is based on 2 percent of the
02:11:46 13 sales, but it's asking you to award damages on a 100
02:11:50 14 percent of the sales.

02:11:51 15 So what you would need to consider and think about
02:11:54 16 is any number that they give you is probably going to be --
02:11:58 17 need to be divided by at least 50 to account for just the
02:12:02 18 ProArt products, unless you find that the other products
02:12:05 19 infringe.

02:12:06 20 And if we look at the other products, we'll see
02:12:09 21 that they have menus that are different. So focus on the
02:12:13 22 menus that you see and the menus that you hear about. This
02:12:18 23 menu has brightness, contrast, saturation, and color
02:12:22 24 temperature. And there is within some of these menu, not
02:12:26 25 all of them, within some of them, there's a way to adjust

02:12:31 1 red, green, or blue, those three colors that I showed you
02:12:36 2 on the pixel.

02:12:38 3 But not every product has a menu like that.
02:12:42 4 There's also products that have only the ability to control
02:12:45 5 brightness. And here you can see, you know, just as a
02:12:48 6 representation, we've got two light bulbs. One is off,
02:12:54 7 it's dark. One is on, it's bright. They're both the same
02:12:59 8 color white. One is just brighter than the other.

02:13:01 9 Brightness controls that aspect of it, not whether
02:13:04 10 it's red versus green versus blue, and not the saturation,
02:13:10 11 which is what Mr. Saba showed you goes from gray to an
02:13:13 12 intense color.

02:13:14 13 And I have a product here, this S -- this S1
02:13:27 14 projector, which only has a menu like this.

02:13:29 15 Your Honor, may I move a little closer to the
02:13:33 16 jury?

02:13:33 17 THE COURT: Not without a microphone, you may not.
02:13:36 18 If you have a microphone, you may.

02:13:38 19 MR. OLIVER: So the S1 product is a projector.
02:13:44 20 I'll try to project it here on the wall next to you. It
02:13:47 21 may or may not be visible in the court.

02:13:53 22 And it's got a menu in it -- oh, it's going to be
02:13:56 23 tough to see, but I'm hoping you will have it in the jury
02:14:05 24 room. But as we look at it here on the screen or on the
02:14:08 25 wall, you can control volume, brightness, contrast. This

02:14:16 1 is a display selection, splendid. You can either choose
02:14:27 2 standard color or theater, and aspect ratio. You can
02:14:31 3 choose the projection position. If you're going to put it
02:14:33 4 on the table or hang it upside down, it'll flip the image.
02:14:38 5 And then there's setup that just gives you the language
02:14:41 6 basically. And there's an information, that's not a
02:14:56 7 setting, and then back to display.

02:14:58 8 In this product, I'm hoping you'll have this, but
02:15:02 9 if not, we'll at least have some testimony about it. There
02:15:06 10 is no way to control red, green, or blue. There's no way
02:15:10 11 to control hue or saturation, as shown in the patent. Yet
02:15:21 12 Lone Star's expert witness, Dr. Ducharme, claimed that that
02:15:24 13 product infringed. He says, they all operate the same.
02:15:34 14 Pay close attention to the menus that we show you.

02:15:38 15 What Dr. Ducharme did was he analyzed one ASUS
02:15:45 16 product, and he said -- or two ASUS products, and he said,
02:15:48 17 from this, I conclude that 130 products infringe, including
02:15:52 18 screens and projectors.

02:15:55 19 We're going to show you about -- during the trial
02:16:01 20 about 10 or 15 other products that don't infringe, that
02:16:06 21 don't have the same menus, that don't have the same
02:16:09 22 features. We're also going to show you even the products
02:16:12 23 he analyzed don't infringe because they don't meet the
02:16:17 24 requirements of the claim.

02:16:18 25 Now, remember, this is about using a method, not

02:16:21 1 using a product. When you or I sit down and we do work --
02:16:26 2 most of us aren't artists -- we plug in the monitor, and we
02:16:30 3 use it. We don't ever use that menu to alter things.
02:16:33 4 Somebody might use it once in a while, but, again, watch
02:16:36 5 for evidence that they won't be able to show you that
02:16:39 6 people actually use those menus in the United States.

02:16:42 7 We're not sitting with a professional artist setup
02:16:48 8 to manage the color of an image. These products are
02:16:54 9 sold -- other than the 2 percent of ProArt products, these
02:16:57 10 products are sold to ordinary people that are using
02:17:00 11 monitors.

02:17:01 12 Again, a U.S. patent covers what happens in the
02:17:05 13 United States. I realize I'm missing Alaska and Hawaii
02:17:08 14 there, but you get the idea. It doesn't matter if somebody
02:17:12 15 uses the method in another country. It doesn't matter if
02:17:16 16 the factory were to use that menu to calibrate it outside
02:17:19 17 of the U.S., because what we're talking about with the U.S.
02:17:23 18 patent laws is what happens inside the U.S.

02:17:25 19 Now, these products get manufactured, they get put
02:17:29 20 in a box somewhere in the world, and they get shipped to
02:17:33 21 distributors. You might see them at Amazon, Best Buy,
02:17:39 22 Walmart, some other less famous distributors. A lot of
02:17:44 23 these distributors are international, and you'll hear that
02:17:48 24 Lone Star won't even show how many of these products
02:17:51 25 actually went to consumers in the U.S. They may have been

02:17:56 1 shipped by UM or Sonex through somebody in Canada or Europe
02:18:00 2 or Mexico or another country.

02:18:02 3 As I said, Mr. McCarady runs teams that service
02:18:06 4 these products in South America.

02:18:14 5 The products go into a box, and so on the box,
02:18:17 6 ASUS doesn't perform the method, and the box comes to the
02:18:20 7 U.S. Just like -- I realize Colt is a U.S. manufacturer,
02:18:20 8 but when a manufacturer puts a product in a box and ships
02:18:25 9 it, they don't take it out and shoot it. They don't take
02:18:28 10 it out and murder somebody once it gets there.

02:18:29 11 The other thing we'll look at and we'll hear about
02:18:32 12 is a bunch of these products are made by companies other
02:18:36 13 than ASUS. ASUS contracts with multiple companies called
02:18:48 14 original device manufacturers, or you may have heard the
02:18:48 15 term ODM. ASUS says, I want a screen that's this big, that
02:18:48 16 displays this many colors, that has these features that
02:18:54 17 looks like this, and if you can build it, we'll put the
02:18:57 18 ASUS name on it, and we'll buy it from you. Those
02:19:01 19 companies make the screens.

02:19:03 20 ASUS doesn't even know what goes into a lot of the
02:19:05 21 screens. They just know what they see when they look at
02:19:09 22 it. They don't know what chips are in the screen. They
02:19:12 23 don't make the software or know what software goes in the
02:19:16 24 screens. They just sell what comes to them in the box
02:19:19 25 after testing some of them to make sure they meet the

02:19:22 1 standards.

02:19:22 2 And you will hear from Dr. Ducharme that he did a
02:19:25 3 test. He took apart one of these monitors, and he found a
02:19:29 4 chip in it. And he then goes on to claim that all of the
02:19:32 5 products from this little projector to monitors, to other
02:19:40 6 projectors, and other size monitors have the same chip in
02:19:43 7 it and have the same software.

02:19:46 8 And pay very close attention because when he shows
02:19:53 9 you the chip and he shows you the software, you will see
02:19:56 10 that the chip number doesn't even match the software
02:19:59 11 number. And you'll also see that he mixed and matched
02:20:03 12 software from different products such that he doesn't even
02:20:06 13 have a complete package of software for one product.

02:20:10 14 The software is not a huge deal. The menus are
02:20:13 15 the huge deal. But this -- what this is going to show is
02:20:16 16 that his analysis is flawed, and he hasn't even fairly
02:20:20 17 considered what may be in those products. Look for the
02:20:24 18 menus. Look for the hue and saturation adjustment in each
02:20:30 19 product.

02:20:31 20 The other thing that Dr. Ducharme will show you is
02:20:34 21 he tested either three colors or he tested six colors.
02:20:39 22 These monitors have 60 million colors or they might have a
02:20:44 23 billion colors. Like I said, it's hard for me to
02:20:49 24 comprehend.

02:20:50 25 The method here talks about independently

02:20:53 1 controlling hue or saturation of individual colors,
02:20:56 2 selecting to independently change the hue or saturation of
02:20:59 3 an individual color. And then when you go down to the
02:21:03 4 bottom of the claim, it says: Without affecting the hue or
02:21:07 5 saturation of any other individual color.

02:21:09 6 The question is: Out of those 16 billion colors,
02:21:14 7 and he tested either three or six colors, how does he --
02:21:20 8 how can he prove to you that none of the others changed?
02:21:24 9 He can't. And what we're going to do -- if Mr. Joshi will
02:21:28 10 come up here and help me for a minute -- we're going to
02:21:31 11 show you a few colors. We're going to show you that the
02:21:36 12 mon- -- that -- the monitor that Dr. Ducharme testified
02:21:40 13 about. We're going to show you that, indeed, the other
02:21:54 14 colors change --

02:21:55 15 THE COURT: Mr. Oliver, I need you with a
02:21:57 16 microphone if you're going to be away from the --

02:22:03 17 Mr. Saba?

02:22:06 18 MR. SABA: Your Honor, we would like to object for
02:22:08 19 the -- for the Defendants doing a demonstration in opening
02:22:12 20 of this sort.

02:22:13 21 THE COURT: Well, I'm going to give him a little
02:22:16 22 latitude.

02:22:18 23 MR. SABA: Thank you, Your Honor.

02:22:24 24 MR. OLIVER: Hello?

02:23:00 25 What we've got here is the color that's in -- on

02:23:03 1 the screen. And what I'm going to do, I'm going to go to
02:23:08 2 the menu. And this product -- the menu is down on the --
02:23:14 3 on the bottom, and I'm going to move to the color
02:23:17 4 selection, and I'm going to show you that when we change
02:23:24 5 the -- what's -- when we change the red, green, or blue,
02:23:29 6 I'm going to decrease red, you're going to see at least a
02:23:34 7 couple of others change in color. You can see that the
02:23:44 8 magenta changed to a dark blue. Yellow changed to green.
02:23:50 9 I'll take that back up so you can see.

02:23:54 10 But changing red changes other colors, but you can
02:23:57 11 also look at what was white here. As I altered it, white
02:24:07 12 changes to blue. As I bring the red back up, white changes
02:24:13 13 red. The same thing is going to be true if you change
02:24:16 14 green or blue.

02:24:17 15 As we listen to the testimony and as we listen to
02:24:22 16 Dr. Ducharme who tested only a couple of colors, he is not
02:24:25 17 going to be able to tell you what actually happened. He
02:24:28 18 has to show that you can change red without changing any
02:24:33 19 other colors.

02:24:35 20 It's going to become blatantly obvious that other
02:24:39 21 colors change when you change red. That's one of the
02:24:41 22 reasons that ASUS says they don't infringe this patent,
02:24:46 23 because they don't.

02:24:47 24 Another feature we'll talk about with Dr. Ducharme
02:24:50 25 is saturation. In some of the products, he talks about how

02:24:54 1 a single saturation control for the whole screen is
02:24:58 2 infringing. And that saturation control, if we go to it --
02:25:23 3 if I decrease the saturation, it's going to take this down
02:25:26 4 to gray. You see the whole -- the whole screen turns gray
02:25:35 5 when I change the saturation.

02:25:36 6 You may or may not recall from the -- from Lone
02:25:41 7 Star's opening statement that -- that the -- they said the
02:25:54 8 problem was the whole screen turned gray. The solution was
02:25:58 9 something different. But yet, Dr. Ducharme is going to
02:26:02 10 come up here and tell you that -- doing exactly what was
02:26:05 11 around before the patent infringes.

02:26:08 12 The other thing -- so there will be much more time
02:26:53 13 for demonstrating this during the trial, these color
02:26:56 14 changes, and you'll see it in more detail, exactly what
02:27:00 15 happens. But you could see when I showed you that -- I'm
02:27:03 16 just a lawyer so you can't take what I showed you as
02:27:07 17 evidence -- but when one of the witnesses shows you, then
02:27:09 18 you will be able to take that as evidence. They will be
02:27:12 19 able to show you with multiple colors. I'm running low on
02:27:16 20 time. I've only got a couple minutes left, so I'm going to
02:27:21 21 rush through a couple of other things I want to talk to you
02:27:23 22 about.

02:27:24 23 If somebody invents something before the patent,
02:27:27 24 that can invalidate the patent. And in this case,
02:27:35 25 Mr. Brett -- I don't know Mr. Brett, but Mr. Brett invented

02:27:39 1 a patent in 1998 before the application for this '435
02:27:42 2 patent was filed in 2001. Three years earlier Mr. Brett
02:27:50 3 had a system that does what we're talking about. The upper
02:27:53 4 left, you can see an input. If you go to the right just a
02:27:57 5 little bit, you can see RGB there. Drops down to the
02:28:02 6 middle, hue and saturation and luminance, the three -- I'm
02:28:13 7 going to walk over because my laser printer doesn't work.
02:28:18 8 RGB, that comes down here, hue, saturation, and luminance.
02:28:24 9 They go across. Delta means it's change.

02:28:29 10 So what changes, RGB, goes back up, adds in,
02:28:36 11 outputs the signal. This was three years before the '435
02:28:39 12 patent was filed.

02:28:47 13 We're also going to show you something called
02:28:48 14 double-patenting. Double-patenting is a concept that
02:28:52 15 basically is when somebody tries to cheat on the Patent
02:28:54 16 Office a little bit. The U.S. government says: You file a
02:28:58 17 patent application, you get 20 years of exclusivity.

02:29:03 18 Sometimes what people do is a couple years later
02:29:06 19 they file another patent application and they try and get
02:29:08 20 another patent on the same thing.

02:29:10 21 And what you will see here is 6,122,012 and the
02:29:15 22 '435 patent. If we zoom in on them, you will see the same
02:29:19 23 inventor, Yosef Segman of Zichron Yaacov, Israel -- Yosef
02:29:26 24 Segman of Zichron Yaacov. Oplus Technology is the company
02:29:30 25 that owns the technology. And look down at the bottom,

02:29:32 1 filed March 1999. Filed August 2001. So two years later
02:29:39 2 he filed another patent on the same thing to try and get
02:29:42 3 more length, more exclusivity, more money out of it even
02:29:46 4 though you're only allowed to file a patent once. So there
02:29:50 5 will be testimony about exactly what's shown in these
02:29:54 6 patents.

02:29:54 7 The final thing I want to discuss with you is
02:29:57 8 money. We don't think there's infringement, as I have told
02:29:59 9 you. The menus don't support it. They don't do the things
02:30:04 10 that Dr. Ducharme said. The colors change when they're not
02:30:08 11 supposed to to infringe the patent. But if you do find
02:30:12 12 infringement on something, a reasonable royalty is what is
02:30:15 13 going to be calculated. Mr. Reed is going to come up, and
02:30:22 14 he's going to tell you why he thinks there's some problems
02:30:24 15 with the methodology that Lone Star used.

02:30:28 16 They're asking for money too early. They can't
02:30:29 17 get money before they notify ASUS of alleged infringement.
02:30:32 18 They didn't even notify ASUS until they filed a lawsuit.

02:30:36 19 There's too many products, including about 40
02:30:40 20 products in their damages that aren't even accused of
02:30:44 21 infringement. They're asking for too high of a royalty
02:30:47 22 because of a flat analysis.

02:30:49 23 Mr. Reed will explain that further.

02:30:52 24 Thank you for your patience. Thank you for your
02:30:54 25 time. I'll see you later in the case, and turn it over to

02:30:57 1 the Plaintiff at the time.

02:31:03 2 THE COURT: Thank you, Mr. Oliver.

02:31:05 3 Does either party wish to invoke the Rule?

02:31:08 4 MR. BENNETT: There's no witnesses to invoke the
02:31:10 5 Rule against, Your Honor. Plaintiff does not.

02:31:12 6 THE COURT: Okay.

02:31:13 7 MR. OLIVER: No, Your Honor.

02:31:14 8 THE COURT: Okay. Very well.

02:31:19 9 Ladies and gentlemen of the jury, before the
02:31:22 10 Plaintiff presents its first witness, we're going to take
02:31:25 11 our afternoon break at this time.

02:31:27 12 I'm going to ask you all to adhere to social
02:31:31 13 distancing as best you can. And as I mentioned to you in
02:31:36 14 my preliminary instructions, don't talk to anybody about
02:31:39 15 the case until you have heard all of the evidence and I
02:31:43 16 have instructed you on the law. Feel free to talk about
02:31:47 17 the weather or football or baseball or whatever you want to
02:31:50 18 talk about, just don't talk about what you have heard thus
02:31:53 19 far in the case.

02:31:54 20 So we will be in recess about 15 minutes.

02:32:03 21 COURT SECURITY OFFICER: All rise for the jury.

02:32:06 22 (Jury out.)

02:32:52 23 THE COURT: Please be seated.

02:32:54 24 Okay. There were a couple of objections. I think
02:32:57 25 one objection each in opening. I don't know if the parties

02:33:01 1 wish to say anything further about that. I had understood
02:33:03 2 the slides were agreed.

02:33:07 3 Mr. Oliver -- and I confirmed that, so I don't
02:33:10 4 know what the issue was with respect at least to
02:33:13 5 Defendant's objection.

02:33:15 6 MR. OLIVER: I'm sorry, Your Honor. We did object
02:33:21 7 to that slide in the expert witness presentation. It was
02:33:23 8 taken out. It was my mistake. I apologize.

02:33:28 9 THE COURT: Okay.

02:33:29 10 MR. SABA: On our objection, Your Honor?

02:33:33 11 THE COURT: Yeah.

02:33:34 12 MR. SABA: Well, candidly, I don't believe we knew
02:33:39 13 they were going to do a demonstration, but I think the ship
02:33:41 14 has sailed on that, so...

02:33:43 15 THE COURT: I'm sorry?

02:33:45 16 MR. SABA: I think it's already too late, so,
02:33:45 17 yeah.

02:33:46 18 THE COURT: That ship has sailed.

02:33:48 19 MR. SABA: Thank you, Your Honor.

02:33:48 20 THE COURT: Okay. We'll be in recess.

02:48:13 21 (Recess taken.)

02:51:03 22 THE COURT: Anything we need to discuss before we
02:51:07 23 have the jury brought in?

02:51:10 24 MR. BENNETT: No, Your Honor.

02:51:12 25 THE COURT: Mr. Richardson, if you would have the

02:51:16 1 jury brought in.

02:51:17 2 MR. OLIVER: Your Honor, Mr. Joshi is going to be
02:51:19 3 attending to the Plaintiff's first witness.

02:51:21 4 THE COURT: Okay. Very well.

02:51:27 5 (Jury in.)

02:53:29 6 THE COURT: Please be seated.

02:53:43 7 Okay. At this time, the Plaintiff may call its
02:53:46 8 first witness.

02:53:47 9 MR. BENNETT: Your Honor, the Plaintiff calls
02:53:50 10 Jesse Rice.

02:54:00 11 (Witness sworn.)

02:54:19 12 THE COURT: You may proceed.

02:54:20 13 MR. BENNETT: Thank you, Your Honor.

02:54:22 14 JESSE RICE, PLAINTIFF'S WITNESS, SWORN

02:54:22 15 DIRECT EXAMINATION

02:54:22 16 BY MS. BENNETT:

02:54:25 17 Q. Mr. Rice, please tell the jury what your position is
02:54:29 18 with Lone Star.

02:54:29 19 A. I'm the managing director of Lone Star.

02:54:32 20 Q. Could you adjust the mic, sir. Say that again, please.

02:54:36 21 A. I'm the managing director of Lone Star.

02:54:38 22 Q. What does it mean to be managing director at Lone Star?

02:54:42 23 A. Essentially means I'm in charge of making decisions for
02:54:45 24 the company.

02:54:46 25 Q. Okay. Does Lone Star have any employees?

02:54:48 1 A. It does not.

02:54:49 2 Q. Does it have any staff?

02:54:51 3 A. It does not.

02:54:52 4 Q. Does it have any offices?

02:54:54 5 A. It does not.

02:54:55 6 Q. What does Lone Star have?

02:54:57 7 A. Lone Star owns some intellectual property.

02:55:00 8 Q. And what is it that Lone Star does?

02:55:02 9 A. Lone Star does intellectual property development,

02:55:09 10 licensing, patented technology.

02:55:11 11 Q. Okay. When you're not at Lone Star or not working with

02:55:15 12 Lone Star, what are you doing?

02:55:16 13 A. My regular day job is I am a software engineer.

02:55:20 14 Q. Okay. Other than being a software engineer, what do

02:55:27 15 you do?

02:55:27 16 A. I enjoy hiking, vacationing, traveling with my wife.

02:55:31 17 Q. Tell the jury a little bit about your family.

02:55:36 18 A. Sure. I live with my wife up in Redmond, Washington.

02:55:39 19 Been married for about 10 years now. My wife is originally

02:55:42 20 from India, and the rest of her family lives here in Texas.

02:55:46 21 Q. Okay. So you -- I'm sorry, did you -- where do you

02:55:50 22 live, did you say? I wasn't sure what you said.

02:56:00 23 A. My wife and I live up in Redmond, Washington.

02:56:03 24 Q. Okay. In terms of the '435 patent that's at issue, how

02:56:05 25 is it that Lone Star acquired it?

02:56:07 1 A. Originally, in about 2009, during the financial crisis,
02:56:11 2 I was looking for some additional investment or financial
02:56:20 3 security opportunities as, you know, the threat of layoffs,
02:56:24 4 et cetera, became more real. And real estate was not
02:56:28 5 necessarily the best investment opportunity at that time.
02:56:31 6 I had some -- one small piece of real estate prior to that
02:56:35 7 going down in value at that time. And so intellectual
02:56:40 8 property was another investment possibility that I decided
02:56:43 9 to explore in 2009.

02:56:50 10 I heard through some acquaintances that Intel had
02:56:54 11 a patent portfolio available for sale and decided to
02:56:59 12 explore that, was able to do some research on the portfolio
02:57:03 13 that they had available and was able to do some negotiation
02:57:08 14 with them and acquire the portfolio from them.

02:57:10 15 Q. Okay. So just so we're clear, did you invent the
02:57:13 16 patent, the invention that's at issue in the patent,
02:57:17 17 the '435?

02:57:17 18 A. I did not.

02:57:18 19 Q. Okay. And when you acquired it, did you buy it
02:57:20 20 personally, or did some -- was it by some other means?

02:57:23 21 A. A -- I formed an LLC in Washington State, and that LLC
02:57:31 22 purchased the portfolio.

02:57:34 23 Q. All right. Was it the same LLC as Lone Star?

02:57:36 24 A. It was not.

02:57:37 25 Q. Okay. How did Lone Star get it, then?

02:57:39 1 A. In 2011, Lone Star was formed, and in 2013, the patents
02:57:48 2 were transferred from the original entity to Lone Star.
02:57:53 3 Q. Okay. We have seen those. There's some binders to
02:57:57 4 your right there. We've seen it enough times. Plaintiff's
02:58:00 5 Exhibit No. 1 is the patent.

02:58:01 6 MR. BENNETT: Your Honor, we move for its
02:58:03 7 admission.

02:58:03 8 THE COURT: Any objection? Subject to the
02:58:08 9 previous objection.

02:58:10 10 MR. JOSHI: Yes. No further --

02:58:11 11 THE COURT: Very well. It'll be received.

02:58:13 12 MR. BENNETT: Thank you.

02:58:13 13 Denver, thank you.

02:58:13 14 BY MR. BENNETT:

02:58:15 15 Q. All right. It should be on your monitor there in front
02:58:18 16 of you. Is that what -- is that what Lone Star acquired?

02:58:20 17 A. Yes.

02:58:21 18 Q. All right. Now, you mentioned you purchased or
02:58:27 19 acquired the patent with intent to make a return on it.
02:58:34 20 Explain that. How would -- how would you make a return off
02:58:36 21 of a patent?

02:58:37 22 A. Typically, with -- the main monetization of a patent is
02:58:44 23 around licensing the patented technology to other
02:58:46 24 companies.

02:58:47 25 Q. Okay. When you say "licensing," we've heard that word

02:58:50 1 a few times. In your own words, how would you describe the
02:58:55 2 licensing? What does that mean?

02:58:57 3 A. Sure. It essentially means creating a contract that
02:59:03 4 authorizes another company to use the patented technology,
02:59:07 5 typically in exchange for some amount of money or some
02:59:11 6 other financial consideration.

02:59:13 7 Q. Okay. Has Lone Star licensed the '435 patent?

02:59:18 8 A. Yes.

02:59:18 9 Q. And to your right, there should be a collection of
02:59:23 10 binders, Volume I. In that first volume, please turn to
02:59:40 11 Exhibit 32.

02:59:47 12 A. Yes.

02:59:47 13 Q. Are you there?

02:59:48 14 A. Yes.

02:59:48 15 Q. All right. If you would, please, just for the sake of
02:59:50 16 time, review 32 -- Exhibits -- Plaintiff's Exhibits 32, 33,
02:59:59 17 and 34.

03:00:14 18 A. Yes.

03:00:14 19 Q. As Lone Star's director, you've seen these documents
03:00:18 20 before, right?

03:00:18 21 A. Yes, I have.

03:00:19 22 Q. What are they?

03:00:20 23 A. These are licensing agreements between Lone Star and
03:00:23 24 Acer, NEC, and Sharp.

03:00:30 25 Q. Okay. So that would be for Plaintiff's Exhibits 32,

03:00:34 1 33, and 34 respectively?

03:00:36 2 A. Yes.

03:00:37 3 Q. All right.

03:00:37 4 MR. BENNETT: Your Honor, we move for the
03:00:38 5 admission of Plaintiff's Exhibit 32, 33, and 34.

03:00:42 6 THE COURT: Any objection?

03:00:43 7 MR. JOSHI: No objection.

03:00:44 8 THE COURT: Very well. They will be received.

03:00:44 9 BY MR. BENNETT:

03:00:46 10 Q. All right. And you'll need another binder for this
03:00:49 11 one. Exhibit -- Plaintiff's Exhibit 91.

03:01:18 12 A. Yes, I have it.

03:01:19 13 Q. Okay. You recognize that document?

03:01:21 14 A. Yes, I do.

03:01:22 15 Q. What is it?

03:01:23 16 A. This is a licensing agreement between Lone Star and
03:01:26 17 Barco.

03:01:27 18 Q. And who is Barco?

03:01:29 19 A. Barco is a company that manufactures mainly projectors.

03:01:43 20 Q. Okay.

03:01:43 21 MR. BENNETT: Your Honor, Plaintiffs move for the
03:01:46 22 admission of Plaintiff's Exhibit 91.

03:01:48 23 THE COURT: Any objection?

03:01:50 24 MR. JOSHI: No objection.

03:01:51 25 THE COURT: It'll be received.

03:01:52 1 MR. BENNETT: Could you go ahead and put up 32,
03:01:54 2 please -- or, actually, no, put up Exhibit 34.

03:01:54 3 BY MR. BENNETT:

03:01:57 4 Q. All right. Using this one as an example -- and we'll
03:02:00 5 just talk about all four generally -- how is it that Lone
03:02:03 6 Star came by these four licenses?

03:02:05 7 A. So Lone Star did a lot of homework with advisers and
03:02:12 8 experts to identify companies that it believed used its
03:02:19 9 patented technology and had filed lawsuits against these
03:02:24 10 companies claiming that its technology was used.

03:02:28 11 And eventually as a result of filing lawsuits with
03:02:35 12 these companies, there were negotiations that took place
03:02:37 13 between Lone Star and these companies to come to these
03:02:40 14 license agreements.

03:02:41 15 Q. And how much -- what's the top end of these four
03:02:48 16 licenses? Which one was at the highest end?

03:02:51 17 A. I believe Sharp was at the high end at 435,000.

03:02:56 18 Q. Okay. And what's the lowest one?

03:02:58 19 A. And I believe Barco was at the lower end, around
03:03:01 20 135,000.

03:03:02 21 Q. Where do the other two fall?

03:03:04 22 A. In the 250- to 280,000 range.

03:03:09 23 Q. Okay. And those companies paid those sums to Lone Star
03:03:12 24 in exchange for a license?

03:03:15 25 A. That's correct.

03:03:15 1 Q. Now, during the opening, Mr. Oliver criticized Lone
03:03:20 2 Star a little bit for not sending a letter, for example.

03:03:26 3 Why didn't you send a letter to these companies
03:03:28 4 before suing them?

03:03:30 5 A. In my experience and opinion, it -- sending a letter to
03:03:37 6 large companies rarely gets any response. So filing a
03:03:42 7 lawsuit is the main mechanism where you're sure to get a
03:03:47 8 response to your concerns.

03:03:49 9 Q. Let's talk about this lawsuit. Obviously, we're here.
03:03:58 10 You've sued ASUS. Who made the decision to sue ASUS?

03:04:03 11 A. Well, again, our experts and advisers did a lot of
03:04:10 12 homework to determine that we believed that ASUS infringed
03:04:15 13 on the patented technology, and, ultimately, I'm the
03:04:20 14 decision maker that makes that call based on that advice of
03:04:24 15 our experts.

03:04:25 16 Q. Okay. In that first binder, will you please open to
03:04:32 17 Plaintiff's Exhibit 14A? Specifically, Page 19 in the
03:04:51 18 bottom right-hand corner of Exhibit 14A.

03:04:55 19 A. Yes, I have it.

03:04:56 20 Q. What is this document?

03:04:57 21 A. This appears to be something from ASUS's website
03:05:08 22 describing 6-axis color control.

03:05:12 23 MR. BENNETT: Your Honor, Plaintiffs move for
03:05:14 24 admission of Plaintiff's Exhibit 114A.

03:05:17 25 THE COURT: Any objection?

03:05:18 1 MR. JOSHI: No.

03:05:18 2 THE COURT: It'll be received.

03:05:19 3 MR. BENNETT: Put up Page 19. Scroll -- yeah.

03:05:32 4 Maybe -- it's Page 19, bottom right corner.

03:05:32 5 BY MR. BENNETT:

03:06:19 6 Q. All right. What is it that the jury is looking at?

03:06:23 7 A. This is a snippet from ASUS's FAQ on their website
03:06:32 8 describing 6-axis color control.

03:06:35 9 Q. All right. Is this some of the information you
03:06:37 10 referred to earlier about what you relied on in pursuing
03:06:41 11 claims against ASUS?

03:06:42 12 A. Yes. Most definitely. I mean, ultimately, we defer to
03:06:47 13 our experts as far as making -- giving advice, but, yes,
03:06:55 14 this is a fairly easy to understand description that very
03:06:58 15 closely matches some of the language in the patent.

03:07:01 16 Q. For the jury's benefit, can you point to the language
03:07:05 17 here that closely, in your view, speaks of the patent and
03:07:10 18 its claims?

03:07:10 19 A. I think perhaps the last sentence there is what -- some
03:07:13 20 of the most important part where it indicates adjusting
03:07:17 21 different colors without affecting the output of the other
03:07:21 22 colors.

03:07:21 23 Q. Okay. Now, earlier, also during opening, Mr. Oliver
03:07:33 24 said or alluded to the fact that you -- that Lone Star
03:07:37 25 waited some time before it brought suit against ASUS. Why

03:07:41 1 did Lone Star wait? If its rights were being infringed, as
03:07:45 2 you say, why did Lone Star wait?

03:07:49 3 A. So it's the first time that I've been involved in
03:07:55 4 patent licensing, and it takes a while to understand the
03:07:59 5 process, to assemble a team of experts that I'm able to
03:08:04 6 work with. And so that was an extended process that, you
03:08:08 7 know, I went through as I learned of this area. So that
03:08:14 8 took some time, and then eventually, we did file suit
03:08:18 9 against ASUS.

03:08:20 10 Q. You said the first time, you mean as Lone Star?

03:08:23 11 A. Correct.

03:08:24 12 Q. All right. In terms of pursuing ASUS in this case, you
03:08:32 13 heard during opening, 2.8 million, we just heard your
03:08:36 14 testimony about the licenses, 435,000 top end. That's a
03:08:42 15 pretty big gap. Why does that gap exist?

03:08:45 16 A. Certainly. And all of those companies, first of all,
03:08:51 17 engaged in licensing and agreement negotiations fairly
03:09:00 18 early in the process, and they have different product
03:09:05 19 lines, different sales volumes, et cetera, from ASUS.

03:09:10 20 And so in this particular case, we moved quite far
03:09:14 21 along in the process. And so based on the recommendations
03:09:20 22 of our damages experts, we feel that that's a reasonable
03:09:22 23 and fair royalty in exchange for, you know, the
03:09:29 24 unauthorized use of our intellectual property.

03:09:31 25 Q. In opening, they talked a little bit about what they

03:09:36 1 said Lone Star is trying to do. Somehow we're trying to
03:09:40 2 take guns away or something.

03:09:42 3 What's your reaction to what you heard?

03:09:45 4 A. Yeah. I mean, the multiple references to murder were a
03:09:52 5 little concerning and confusing, certainly. And I don't
03:09:57 6 think Lone Star is trying to take anything away. Lone Star
03:10:01 7 feels as though it has, you know, a valuable asset that it
03:10:06 8 owns, and it just wants to protect that property right and
03:10:10 9 get what it feels is fair and reasonable in exchange.

03:10:13 10 Q. Is Lone Star trying to murder anyone's technology?

03:10:16 11 A. Certainly not.

03:10:17 12 Q. What is it that Lone Star wants?

03:10:19 13 A. Lone Star just wants a fair and reasonable compensation
03:10:24 14 for the unauthorized use of its valuable patented
03:10:24 15 technology.

03:10:32 16 Q. Thank you, Mr. Rice.

03:10:32 17 MR. BENNETT: I pass, Your Honor.

03:10:41 18 THE COURT: Cross-examination?

03:10:45 19 MR. JOSHI: Thank you, Your Honor.

03:10:48 20 CROSS-EXAMINATION

03:10:48 21 BY MR. JOSHI:

03:10:49 22 Q. Good afternoon, Mr. Rice. My name is Vinay Joshi. I
03:10:52 23 am a lawyer for ASUS, and I want to just ask you just a few
03:10:56 24 questions.

03:10:56 25 So I was listening to your examination by

03:11:00 1 Mr. Bennett. As I understand, it you're the only employee
03:11:02 2 of Lone Star; is that right?
03:11:03 3 A. That's correct.
03:11:04 4 Q. Okay. So you are Lone Star?
03:11:06 5 A. Yes.
03:11:06 6 Q. And you live in Redmond, Washington?
03:11:12 7 A. Yes, that's correct.
03:11:14 8 Q. So why did you name your company Lone Star?
03:11:17 9 A. I created the company in Texas. I have connections to
03:11:22 10 Texas through my wife's family. We visit here quite
03:11:26 11 frequently. Also, Texas respects property rights a great
03:11:33 12 deal, and so the formation of the company here made sense
03:11:37 13 from that standpoint, as well.
03:11:41 14 Q. So did you name your company Lone Star so you could
03:11:44 15 bring lawsuits in Texas?
03:11:51 16 A. Not -- no, not specifically so I could bring lawsuits
03:11:55 17 in Texas. It is a Texas company.
03:11:57 18 Q. How does your company make money?
03:12:04 19 A. The company makes money by offering a license to its
03:12:11 20 intellectual property.
03:12:13 21 Q. Do you make any product?
03:12:15 22 A. No.
03:12:16 23 Q. And you don't make monitors either, I assume?
03:12:19 24 A. That's correct.
03:12:20 25 Q. Now, the owner -- I'm sorry -- the inventor of the

03:12:32 1 patent, Mr. Segman, did he ever work for you at any point
03:12:36 2 in time?

03:12:37 3 A. No.

03:12:38 4 Q. Have you ever met him?

03:12:39 5 A. I have not.

03:12:40 6 Q. Were you here when Mr. Oliver did the opening for ASUS?

03:12:44 7 A. Yes.

03:12:44 8 Q. And he said that Mr. Segman filed two patents -- patent

03:12:53 9 applications in a two-year span, and Mr. Oliver talked

03:12:58 10 about double-patenting. Were you here when he did that?

03:13:01 11 A. I was.

03:13:04 12 Q. Do you know why Mr. Segman filed two patents in two

03:13:09 13 years -- two years apart?

03:13:12 14 A. I do not.

03:13:21 15 Q. So let's talk about this lawsuit. Mr. Bennett asked

03:13:24 16 you some questions about this lawsuit. Are you aware that

03:13:30 17 there was another Defendant in this lawsuit at one time?

03:13:36 18 A. Another Defendant in this lawsuit?

03:13:37 19 Q. Are you aware that Barco was also sued in this lawsuit?

03:13:41 20 A. Yes.

03:13:41 21 Q. Okay. So you sued Barco, and you sued ASUS?

03:13:45 22 A. Yes.

03:13:45 23 Q. And Barco paid you \$135,000 for a license to the '435

03:13:52 24 patent?

03:13:52 25 A. Yes, that's correct.

03:13:53 1 Q. And that was just a few weeks ago; is that right?

03:13:58 2 A. I would have to look at the dates, but I believe it was
03:14:06 3 last year.

03:14:07 4 Q. Okay. Last year, meaning 2020?

03:14:11 5 A. Correct.

03:14:11 6 Q. And was that towards the end of 2020?

03:14:12 7 A. I believe that's correct.

03:14:13 8 Q. Okay. Is Barco a large company?

03:14:22 9 A. Barco is a fairly large company.

03:14:23 10 Q. And they sell monitors, projectors, just like ASUS?

03:14:27 11 A. I believe they sell primarily projectors.

03:14:32 12 Q. Okay. And you said that you're now asking ASUS
03:14:38 13 for 2.8 million because we didn't settle early in the
03:14:42 14 process and proceeded to fight; is that -- is that correct?

03:14:46 15 A. Partially, as well as differences in volume of
03:14:52 16 products, sales volume, that sort of thing. Damages expert
03:14:58 17 takes all those into account when he does the calculations.

03:15:01 18 Q. Okay. So just to reconfirm, Barco paid \$135,000 for
03:15:07 19 the license?

03:15:08 20 A. Yes.

03:15:09 21 Q. Is Sharp a big company?

03:15:12 22 A. Yes.

03:15:13 23 Q. In fact, it's a big multi-national company, correct?

03:15:19 24 A. Yes.

03:15:20 25 Q. And they paid you \$435,000 for a license to this

03:15:24 1 patent?

03:15:24 2 A. That's correct.

03:15:25 3 Q. And then you said two other people paid you between

03:15:29 4 250,000 and \$280,000?

03:15:31 5 A. Correct.

03:15:32 6 Q. Were those big companies?

03:15:35 7 A. They were relatively large companies.

03:15:37 8 Q. Okay.

03:15:50 9 MR. JOSHI: May I please have Plaintiff's 14A

03:15:54 10 pulled up for me, please? And go to page 19.

03:15:54 11 BY MR. JOSHI:

03:16:15 12 Q. Mr. Rice, you recall Mr. Bennett asked you some

03:16:19 13 questions about this page?

03:16:20 14 A. Yes.

03:16:20 15 Q. Okay. Now, it says on the document: What is 6-axis

03:16:27 16 color independent control?

03:16:32 17 A. Yes.

03:16:32 18 Q. Okay. And are you aware that ASUS has 6-axis products

03:16:44 19 and then there are products that are not 6-axis?

03:16:49 20 A. I don't have familiarity with every individual product.

03:16:54 21 I know our experts look at all the products.

03:16:56 22 Q. Okay. But you specifically talked about 6-axis during

03:17:00 23 your direct exam, and you pointed this marketing material

03:17:04 24 of ASUS as the reason why you believe there's infringement,

03:17:07 25 correct?

03:17:08 1 A. This is one example, yes.

03:17:09 2 Q. Okay. And you realize that the 6-axis products are
03:17:14 3 ASUS's high end products? Were you aware of that?

03:17:19 4 A. I'm aware that at least some of the products are
03:17:23 5 covered by this particular language, yes.

03:17:26 6 Q. Are you aware that less than 2 percent of ASUS's sales
03:17:30 7 are of 6-axis products?

03:17:32 8 A. I'm not aware of that specific figure.

03:17:35 9 Q. But at least on -- on your direct exam, you didn't show
03:17:44 10 any documentation for any other product, correct, just the
03:17:47 11 6-axis product?

03:17:48 12 A. Only this particular slide, yes.

03:17:52 13 Q. Okay.

03:17:53 14 MR. JOSHI: Could you scroll up to where it shows
03:17:57 15 the user interface? I think you have to go down actually.
03:18:12 16 My apologies, Andrew. It's after 19. I believe it's 20.

03:18:33 17 THE COURT: You can remove that, Mr. Richardson,
03:18:36 18 if you want to.

03:18:38 19 COURT SECURITY OFFICER: Thank you, Your Honor.

03:18:38 20 BY MR. JOSHI:

03:18:41 21 Q. Mr. Rice, you see this menu?

03:18:43 22 A. Yes.

03:18:44 23 Q. Okay. And then do you see that what this user
03:18:47 24 interface allows a user to do is first select either a
03:18:56 25 6-axis hue or a 6-axis saturation? You see that?

03:18:59 1 A. I can see that.

03:19:01 2 Q. Okay. And then once the user selects one of those,
03:19:04 3 then it allows it to select a color, R for red, G for
03:19:11 4 green, B for blue, C for cyan, M for magenta, Y for yellow.
03:19:17 5 It allows the user to choose one of those six colors,
03:19:21 6 correct?

03:19:21 7 A. I have not used this particular interface. I would
03:19:24 8 rely on our experts as far as the particular functionality.

03:19:28 9 Q. Okay. But yet -- okay, so if that's true --

03:19:32 10 MR. JOSHI: Then we go back up one page.

03:19:32 11 BY MR. JOSHI:

03:19:43 12 Q. If that's true and you haven't used it and you're
03:19:46 13 relying on experts, how do you reconcile that with saying:
03:19:49 14 I read this on ASUS's webpage, and that's why I believe
03:19:53 15 there was infringement or something to that effect?

03:19:56 16 MR. BENNETT: Objection, misstates prior
03:19:59 17 testimony, Your Honor.

03:20:00 18 MR. JOSHI: I'll reask the question.

03:20:00 19 BY MR. JOSHI:

03:20:03 20 Q. What was your testimony about this page, could you tell
03:20:05 21 me?

03:20:05 22 A. I believe that I indicated that the language on this
03:20:07 23 page is very similar to language in the patent.

03:20:12 24 Q. Okay. So you're someone who understands how to read a
03:20:19 25 patent, then?

03:20:20 1 A. I would not say that I understand the detailed language
03:20:24 2 of the patent, but at a high level, this is fairly
03:20:27 3 straightforward language that does match very closely the
03:20:30 4 wording in the patent.

03:20:31 5 Q. Okay. So then -- so if we go to the next page, the
03:20:36 6 next page relates to this.

03:20:36 7 A. Yeah.

03:20:45 8 Q. So you understand that the 6-axis that's referenced on
03:20:48 9 the previous page references to these six colors, correct?

03:20:52 10 A. Yes.

03:20:52 11 Q. Okay. So in this product of ASUS, a user is able to
03:20:59 12 choose either hue or saturation, and then after selecting
03:21:04 13 one, then he or she can select from one of those six
03:21:07 14 colors, correct?

03:21:08 15 A. Again, I'm not familiar with this particular interface
03:21:13 16 so I would have to defer to our experts on that.

03:21:17 17 Q. Okay. So to be clear, then, the sentence on the
03:21:21 18 previous page that you testified about on your direct and
03:21:26 19 then this very next page that shows the menu, you yourself
03:21:30 20 are not in a position to tie them together, correct?

03:21:34 21 A. I'm not an expert in the color control, so it would be
03:21:40 22 our technical experts that I would defer to.

03:21:43 23 Q. Okay. And, Mr. Rice, you testified that you are the
03:21:46 24 owner of the '435 -- let me strike that question.

03:21:53 25 Mr. Rice, you testified that Lone Star is the

03:21:55 1 owner of the '435 patent?

03:21:56 2 A. Yes.

03:21:56 3 Q. And in your direct exam you didn't present any document
03:22:00 4 or show any document that proves that, correct?

03:22:03 5 A. Correct.

03:22:03 6 Q. Okay. Thank you.

03:22:06 7 MR. JOSHI: No further questions, Your Honor.

03:22:07 8 THE COURT: Redirect?

03:22:08 9 MR. BENNETT: Yes. Thank you, Your Honor.

03:22:15 10 REDIRECT EXAMINATION

03:22:15 11 BY MR. BENNETT:

03:22:18 12 Q. Mr. Rice, does Lone Star own the patent?

03:22:20 13 A. Yes, it does.

03:22:21 14 Q. And why does it own the patent?

03:22:23 15 A. It owns the patent because I am aware that I
03:22:26 16 transferred the patent to Lone Star.

03:22:28 17 Q. Okay.

03:22:34 18 MR. BENNETT: Denver, will you please pull up
03:22:38 19 Plaintiff's Exhibit No. 1? Zoom in there on the first
03:22:43 20 sentence of the abstract, please, and highlight that.

03:22:43 21 BY MR. BENNETT:

03:22:51 22 Q. Now, earlier you had said that the language from 14A
03:22:58 23 closely resembled language from the patent. Now, this
03:23:02 24 isn't claim language, but is this the language you referred
03:23:06 25 to?

03:23:06 1 A. This is the language that I was referring to.

03:23:09 2 Q. Okay. Mr. Joshi asked you about -- well, are you
03:23:17 3 punishing or -- because ASUS is fighting, you're asking for
03:23:21 4 more. I wanted to talk to you about that some.

03:23:25 5 For every sale of an ASUS product that infringes
03:23:30 6 on this patent, what happens to Lone Star?

03:23:33 7 A. Lone Star is essentially prevented from getting
03:23:41 8 compensation for the use of its patented technology every
03:23:44 9 time one of those products is sold.

03:23:46 10 Q. And as more time passes, what happens to products sold?

03:23:51 11 A. Sales continue, and those numbers increase.

03:23:55 12 Q. And as numbers increase, what happens to Lone Star's
03:24:00 13 losses?

03:24:00 14 A. Lone Star is further impacted by not getting fair
03:24:05 15 compensation for its technology.

03:24:07 16 Q. All right. Mr. Joshi asked you about 2 percent of
03:24:12 17 sales. Do you remember that?

03:24:12 18 A. Yes.

03:24:13 19 Q. He -- I didn't hear it. Did you hear him say anything
03:24:17 20 about how much 2 percent is?

03:24:19 21 A. No.

03:24:20 22 Q. I didn't, either.

03:24:22 23 Do you know that? How much 2 percent of what is?

03:24:27 24 A. I don't.

03:24:28 25 Q. All right. And why not?

03:24:33 1 A. I don't -- I'm not privy to the detailed sales
03:24:37 2 information. Our damages expert does those calculations
03:24:41 3 and understands the sales volumes and is able to make those
03:24:46 4 calculations.

03:24:51 5 Q. Okay. And why are you not privy to that?

03:24:54 6 A. I am not allowed to see that information. That
03:24:57 7 information is confidential, and it's restricted to only
03:25:00 8 certain parties in the case. And I am not one of those
03:25:04 9 parties.

03:25:08 10 Q. Mr. Joshi also asked you about the Segman invalidity
03:25:14 11 that you heard about somewhat in the opening. Remember
03:25:17 12 that?

03:25:17 13 A. Yes.

03:25:17 14 Q. Are you an expert in patent law?

03:25:20 15 A. I am not.

03:25:21 16 Q. Does Lone Star have an expert that it will call to
03:25:27 17 testify on that issue?

03:25:28 18 A. It does have a technical expert, yes.

03:25:31 19 Q. And that's not you?

03:25:32 20 A. Correct.

03:25:32 21 Q. All right. Going back to the conversation about ASUS
03:25:38 22 and what Lone Star's intentions are, just so we're all
03:25:42 23 clear in light of Mr. Joshi's questioning, what are Lone
03:25:45 24 Star's intentions in this lawsuit?

03:25:48 25 A. Lone Star's intentions are just to simply get fair and

03:25:54 1 reasonable compensation for the unauthorized use of its
03:25:57 2 patented technology.

03:25:58 3 MR. BENNETT: That's all I have, Your Honor.

03:26:00 4 THE COURT: Recross?

03:26:07 5 MR. JOSHI: Very briefly.

03:26:12 6 RECROSS-EXAMINATION

03:26:12 7 BY MR. JOSHI:

03:26:16 8 Q. I just want to clarify something very quickly,
03:26:19 9 Mr. Rice. This shouldn't take very long at all. Just a
03:26:23 10 second ago you read -- you read the top line of Claim 1.
03:26:27 11 Do you recall that? It was just a couple of minutes ago.

03:26:32 12 A. I believe it was the abstract.

03:26:36 13 Q. Okay.

03:26:38 14 A. It was the abstract.

03:26:39 15 Q. Let me ask you a question about the claims. You
03:26:42 16 realize what your company is asserting in this lawsuit is a
03:26:46 17 method claim, correct?

03:26:48 18 A. As Mr. Bennett mentioned, I'm not a patent expert and
03:26:55 19 so I rely on our technical expert to assert that.

03:26:59 20 Q. But as a -- as the owner of the company and someone who
03:27:04 21 brought this lawsuit, you realize that infringement of a
03:27:09 22 method claim occurs when a person practices that method,
03:27:14 23 not when the product is sold. You understand that?

03:27:17 24 A. Again, I would defer to our expert, technical expert on
03:27:21 25 that.

03:27:21 1 Q. Okay. Sir, just one last question. You understand
03:27:24 2 that if ten people buy a product but only one of them
03:27:30 3 practices a method claim, then the other nine don't
03:27:37 4 infringe, you understand that, right?

03:27:38 5 A. Again, I'm not an expert on the details of patent
03:27:41 6 usage, so I would defer to our expert on that.

03:27:46 7 Q. Okay. Thank you.

03:27:47 8 MR. JOSHI: Thank you, Mr. Rice.

03:27:49 9 THE COURT: Anything further?

03:27:50 10 MR. BENNETT: No further questions, Your Honor.

03:27:52 11 THE COURT: Okay.

03:27:54 12 You may step down.

03:27:55 13 Call your next witness.

03:27:57 14 MR. BENNETT: Your Honor, we would call Mr. Alvin
03:27:59 15 Lin, except he's a remote witness. Is he available?

03:28:06 16 MR. JOSHI: He is available. He's ready. I just
03:28:10 17 have to let my colleague know for him to -- I'll step out
03:28:14 18 and do that.

03:28:14 19 THE COURT: Okay. Ladies and gentlemen, we're
03:28:16 20 going to take a short recess while we make the technical
03:28:22 21 arrangements that are necessary for the next witness.

03:28:24 22 As a reminder, don't discuss the case among
03:28:27 23 yourselves until all of the evidence has been presented and
03:28:31 24 I've instructed you on the law. We'll get you back in the
03:28:35 25 courtroom just as quickly as we can.

03:28:39 1 (Jury out.)

03:29:08 2 THE COURT: Okay.

03:29:09 3 MR. JOSHI: Your Honor, I have been informed that
03:29:14 4 we are ready, that there are three people who have joined
03:29:17 5 the link.

03:29:20 6 THE COURT: You're close enough right now,
03:29:21 7 Mr. Joshi, I can hear you.

03:29:23 8 MR. JOSHI: We have three people on. One is the
03:29:26 9 interpreter, one is the witness, Mr. Alvin Lin, and ASUS's
03:29:30 10 in-house counsel in Taiwan, Mr. Allen Chen, is also on the
03:29:35 11 same link. So there are three people, but they're in
03:29:39 12 different rooms, and Mr. -- the witness is all by himself.

03:29:42 13 THE COURT: Okay. Mr. Bennett, any concerns about
03:29:47 14 that?

03:29:47 15 MR. BENNETT: They're in separate rooms, that's --

03:29:51 16 THE COURT: Very well.

03:29:56 17 MR. JOSHI: And the Court's IT needs to connect
03:30:00 18 the link.

03:30:00 19 THE COURT: Okay. All right. You all can just
03:30:00 20 stand down. As soon as that gets done, we'll get the jury
03:30:26 21 back in.

03:30:26 22 MR. BENNETT: Your Honor, Ms. Little has reminded
03:30:28 23 me of an issue we needed to raise as to Mr. Lin.

03:30:35 24 THE COURT: Okay.

03:30:35 25 MR. BENNETT: And the issue deals with testing.

03:30:44 1 There were a number of exhibits, Defense Exhibits 140
03:30:48 2 through 142. It's not going to come in on my direct, I'm
03:30:51 3 not going to ask him a word about that testing, but I
03:30:56 4 imagine that they will on their -- well, their direct --
03:30:58 5 cross for all intents and purposes now.

03:31:02 6 We objected to it on several grounds. It's
03:31:05 7 improper lay testimony. It's hearsay because Mr. Lin is
03:31:08 8 shown a depo transcript where he admits he didn't do it
03:31:12 9 himself. He had somebody else do it. It's not a business
03:31:15 10 record that they keep in the ordinary course. It's just
03:31:18 11 hearsay all over the place.

03:31:19 12 So under 701, under 802, under -- it doesn't meet
03:31:24 13 any exceptions under 803, it's also prejudicial, and for
03:31:29 14 all of those reasons, we'd move for its seclusion and that
03:31:32 15 they not be allowed to ask about it on their examination.

03:31:36 16 MR. JOSHI: So a few responses, Your Honor.

03:31:39 17 So, firstly, we should remember for context, you
03:31:41 18 just allowed 139 documents to come in. This test result
03:31:46 19 was given to them before Mr. Lin's deposition. They
03:31:49 20 deposed him. He is not going to testify about
03:31:51 21 infringement. He is going to testify about a test that
03:31:53 22 happened under his supervision. Mr. David Lin worked for
03:31:58 23 Mr. Alvin Lin. Mr. Alvin Lin asked him to do the test.
03:32:03 24 Mr. Alvin Lin designed the test. And this test shows
03:32:06 25 essentially what happens to colors on a monitor, that --

03:32:08 1 it's just one Microsoft Excel file. It's got a bunch of
03:32:14 2 data in it, and he has been deposed about it already.

03:32:17 3 MR. BENNETT: The extent of the deposition was did
03:32:20 4 you conduct this test? No, David Lin did. And that's
03:32:24 5 about it.

03:32:25 6 It's -- their expert did not rely on it. They
03:32:29 7 have not designated Mr. Alvin Lin as a nonretained expert.
03:32:35 8 He is a lay witness who is trying to get in expert
03:32:37 9 testimony.

03:32:38 10 THE COURT: Why is it not expert testimony?

03:32:41 11 MR. JOSHI: It is not expert testimony because he
03:32:45 12 is not going to testify about infringement. He is not
03:32:48 13 going to give any opinions. He is just going to say, I
03:32:53 14 adjusted the color, and this is what happened to other
03:32:55 15 colors when I did that test. It's purely factual.

03:33:00 16 THE COURT: Okay. And so -- and that's --
03:33:02 17 what's -- I guess my question is, what was the purpose of
03:33:04 18 the test?

03:33:05 19 MR. JOSHI: The test -- he did the test because he
03:33:10 20 found out from legal that ASUS was being sued for a patent
03:33:16 21 in which a change of one color doesn't change other colors.
03:33:21 22 He didn't do the test. He submitted an affidavit to that
03:33:26 23 effect to this Court. He didn't do it under the
03:33:29 24 supervision of legal, but he nonetheless did it in the
03:33:32 25 context of the patent to see if the products are anything

03:33:36 1 like the patent.

03:33:38 2 THE COURT: So is someone going to compare it to
03:33:41 3 the claim language?

03:33:44 4 MR. JOSHI: Our expert is not, no.

03:33:46 5 THE COURT: Is anyone going to compare it to the
03:33:49 6 claim language?

03:33:50 7 MR. JOSHI: No.

03:33:50 8 THE COURT: So how is it relevant?

03:33:54 9 MR. JOSHI: It is -- so counsel will talk about
03:34:02 10 the test in the closing argument.

03:34:03 11 THE COURT: But counsel is not an expert witness.

03:34:06 12 MR. JOSHI: I understand, Your Honor. But that's
03:34:09 13 information for the jury, we believe, and their expert may
03:34:11 14 wish to comment on it.

03:34:14 15 THE COURT: I'm going to sustain the objection.

03:34:16 16 MR. BENNETT: Thank you, Your Honor.

03:34:16 17 THE COURT: I don't see how it becomes relevant
03:34:20 18 based on -- I mean, if you're aware of some law out there
03:34:24 19 that says an attorney can, you know, compare this test to
03:34:28 20 what the claim language is in closing argument and let the
03:34:32 21 jury reach that decision, I'd sure like to review that case
03:34:36 22 law, but I don't think that's what the authority is.

03:34:40 23 Are you aware of anything like that?

03:34:42 24 MR. JOSHI: I am not. I understand it's a bit
03:34:46 25 unusual, Your Honor, but this is a situation where the

03:34:50 1 technology is really not that complicated. The jury can
03:34:54 2 probably listen to the fact witness and make some
03:34:57 3 conclusions on their own. This is just about what happens
03:35:00 4 to one color when another color is changed.

03:35:03 5 THE COURT: I do think it's unusual, and the
03:35:05 6 authority I'm familiar with doesn't allow it.

03:35:08 7 MR. JOSHI: All right. Thank you.

03:35:10 8 THE COURT: So I'll sustain the objection.

03:35:11 9 MR. BENNETT: Thank you, Your Honor.

03:35:12 10 THE COURT: Okay. If you would, please have the
03:35:14 11 jury brought in.

04:00:54 12 COURT SECURITY OFFICER: All rise for the jury.

04:01:08 13 (Jury in.)

04:01:19 14 THE COURT: Please be seated.

04:01:23 15 Okay. Ladies and gentlemen of the jury, I
04:01:25 16 apologize for the delay. We had some technical
04:01:29 17 difficulties that needed to be resolved, and hopefully this
04:01:34 18 will work as we anticipate.

04:01:37 19 The next witness for the Plaintiff's behalf is
04:01:40 20 testifying remotely, that is, he -- you see him on the
04:01:44 21 screen there. He is located in Taipei, Taiwan.

04:01:50 22 And our translator is Vivan Josh.

04:01:56 23 Ms. Josh, where are you located, ma'am?

04:02:03 24 THE INTERPRETER: Plano, Texas.

04:02:05 25 THE COURT: All right. At this time, I'm going to

04:02:07 1 ask Mrs. Schroeder to approach the lectern, and she will
04:02:11 2 swear in Ms. Josh as the translator.

04:02:15 3 Mr. Bennett, if you will move here.

04:02:16 4 MR. BENNETT: Oh, I'm sorry. Yes, of course.

04:02:17 5 THE COURT: Mrs. Schroeder, if you would swear in
04:02:19 6 the interpreter.

04:02:25 7 (Interpreter sworn.)

04:02:31 8 THE COURT: Okay. And at this time, Ms. Josh, the
04:02:37 9 courtroom deputy will swear in the witness, and you can
04:02:40 10 translate that for us.

04:02:43 11 (Witness sworn.)

04:03:17 12 THE COURT: Okay. Mr. Bennett, you may proceed.

04:03:20 13 MR. BENNETT: Thank you, Your Honor.

04:03:21 14 ALVIN LIN, PLAINTIFF'S WITNESS, SWORN

04:03:21 15 DIRECT EXAMINATION

04:03:21 16 BY MR. BENNETT:

04:03:28 17 Q. Mr. Lin, can you see me okay?

04:03:35 18 A. Right now, I can only see myself.

04:03:38 19 Q. Okay. You can hear me, though?

04:03:44 20 A. Yes.

04:03:45 21 Q. Well, we'll proceed with hearing me, and maybe at some
04:03:53 22 point you can see me, too, okay?

04:04:06 23 A. Okay.

04:04:07 24 Q. Mr. Lin, you are an ASUS employee, correct?

04:04:12 25 A. Yes.

04:04:16 1 Q. You have worked at ASUS since 1997, right?

04:04:21 2 A. I have to make a correction here. It should be since
04:04:37 3 1996.

04:04:43 4 Q. Okay. Thank you for that.

04:04:45 5 You are an ASUS division director, right?

04:04:59 6 A. Yes.

04:05:00 7 Q. You are responsible for technical support and providing
04:05:05 8 solutions for technical issues?

04:05:16 9 A. Yes.

04:05:17 10 Q. I want to show you, I hope, a document, Plaintiff's 13,
04:05:39 11 P3 I think it's been known to you as.

04:06:01 12 Can you see that document, Mr. Lin?

04:06:03 13 A. Yes.

04:06:07 14 Q. All right. This is an email from Nicky Lin.

04:06:12 15 Do you see that?

04:06:21 16 A. Yes.

04:06:21 17 Q. And you are one of the recipients of this email,
04:06:33 18 correct?

04:06:34 19 A. Correct.

04:06:35 20 Q. Who is Nicky Lin, Mr. Lin?

04:06:43 21 A. PM, project manager.

04:06:59 22 Q. She's an ASUS project manager?

04:07:02 23 A. Yes.

04:07:03 24 Q. This email is dated September 18, 2017.

04:07:10 25 Do you see that?

04:07:12 1 A. Yes.

04:07:19 2 Q. And the subject of this email is 21.6 4K OLED Panel
04:07:30 3 Open Issue Discussion.

04:07:31 4 Do you see that?

04:07:46 5 A. Yes.

04:07:48 6 Q. And the purpose of this email is to discuss features of
04:07:55 7 an ASUS display product, correct?

04:08:17 8 A. Yes.

04:08:18 9 Q. You weren't here in the courtroom earlier today, but
04:08:24 10 the jury has heard a little bit about how ASUS uses other
04:08:27 11 companies to supply components to its displays.

04:09:01 12 A. In fact, the subject matter for this email, the
04:09:06 13 components we discussed in here, are also from one of the
04:09:11 14 suppliers.

04:09:14 15 Q. Thank you, Mr. Lin.

04:09:19 16 And if I could just say one clarifying thing
04:09:22 17 really quickly. Because this is being translated,
04:09:42 18 sometimes I'm going to have to explain something before I
04:09:45 19 ask my question, okay?

04:09:56 20 A. Okay.

04:09:57 21 Q. So if you can do your best to wait until the question
04:10:00 22 is asked before you start in on your answer, that will help
04:10:05 23 things go more smoothly, all right?

04:10:20 24 A. Okay.

04:10:20 25 Q. But nobody is expecting perfection, all right? We'll

04:10:35 1 work together as best we can.

04:10:38 2 A. Okay.

04:10:38 3 Q. All right. Getting back to Plaintiff's Exhibit 13, the
04:10:44 4 discussion here is about requests that ASUS is making of
04:10:50 5 its supplier about features ASUS wants in its display
04:10:56 6 products, correct?

04:11:06 7 A. Yes.

04:11:13 8 Q. And, in fact, in this particular email --

04:11:19 9 MR. BENNETT: Denver, will you -- will you please
04:11:24 10 blow up the bolded part, if you can, please?

04:11:30 11 Go ahead, Ms. Josh.

04:11:30 12 BY MR. BENNETT:

04:11:43 13 Q. And I want to focus your attention on this particular
04:11:46 14 piece of the email that's bolded from the rest of the text,
04:11:49 15 okay?

04:12:01 16 A. Okay.

04:12:02 17 Q. Before I do that, though, I want to ask a more general
04:12:06 18 or broad question, and it's this --

04:12:11 19 MR. BENNETT: Go ahead, Ms. Josh.

04:12:24 20 A. Okay.

04:12:24 21 BY MR. BENNETT:

04:12:27 22 Q. And here is my question: ASUS has in Taiwan a research
04:12:33 23 and development department that finds new features for
04:12:38 24 products that it thinks consumers will like, correct?

04:13:02 25 A. Yes.

04:13:03 1 Q. All right. And in this email, the three features
04:13:07 2 bolded here are some of the features that ASUS wants to add
04:13:12 3 as a result of that kind of research, correct?

04:13:16 4 A. Yes.

04:13:35 5 Q. And, in particular, these three features, I want to
04:13:42 6 focus your attention to Number 7. One of the features ASUS
04:13:47 7 specifically asked for is color accuracy control to meet
04:13:53 8 delta E greater than equals 2.

04:14:22 9 A. It should be less than or equal to 2.

04:14:28 10 Q. Okay. It should be that, but my question is, that is a
04:14:31 11 specific feature, Number 7. What's provided there is a
04:14:40 12 specific feature that ASUS is asking its suppliers to
04:14:46 13 supply in its display devices?

04:14:53 14 A. That's right. For this series of products, we do need
04:15:10 15 this specification.

04:15:12 16 Q. And ASUS also asked its suppliers to find a way to
04:15:17 17 incorporate the feature listed in Number 9 about color
04:15:22 18 temperature, right?

04:15:24 19 A. That is right. That is one of the features required by
04:15:45 20 these series of products.

04:15:48 21 Q. And I want to draw attention to the word "scaler"
04:15:52 22 there.

04:15:53 23 Do you see that?

04:16:06 24 A. I can see that.

04:16:07 25 Q. Okay. And the scaler is a chip inside the display

04:16:13 1 product, right?

04:16:14 2 A. That is correct. It is a chip inside our product.

04:16:25 3 Q. And that chip runs source code, right?

04:16:36 4 A. Well, I want to clarify here. Source codes need to be
04:17:03 5 compiled into a binary code in order to be used or run in
04:17:14 6 this product.

04:17:15 7 Q. Okay. But my question was, a scaler chip executes
04:17:19 8 source code, correct?

04:17:34 9 A. That's right. It needs to execute that source codes.

04:17:42 10 You're right.

04:17:43 11 Q. Thank you.

04:17:46 12 You personally have not looked at the source code
04:17:49 13 run in the any of these scaler chips, have you?

04:17:55 14 A. That's right. I have not.

04:18:07 15 Q. Okay. But in any event, when ASUS requests the
04:18:12 16 features to be incorporated into the display, ASUS makes
04:18:17 17 sure that the suppliers follow through and provide that
04:18:21 18 feature in the desired product, right?

04:18:54 19 A. You should say that we would like to have feedback from
04:18:56 20 our suppliers whether they can provide such functionality.

04:19:03 21 Q. Well, that wasn't really my question. Let me reask it.

04:19:07 22 My question was: When ASUS has determined that it
04:19:14 23 wants a particular feature in a product and the supplier
04:19:17 24 can supply that feature, ASUS then follows up to make sure
04:19:22 25 that the supplier places that feature in the display

04:19:27 1 product?

04:19:57 2 A. Yes.

04:19:57 3 Q. And the reason ASUS follows up to make sure that the
04:20:03 4 feature is incorporated into the product is because it
04:20:08 5 hopes that feature will attract more buyers for the
04:20:19 6 product, at least in part, right?

04:20:34 7 A. Right.

04:20:34 8 Q. I'm going to show you what has been marked already as
04:20:43 9 Plaintiff Exhibit 14A.

04:21:00 10 MR. BENNETT: We're going to go to Page 19 of
04:21:06 11 Plaintiff's Exhibit 14A. Could you scroll up just a little
04:21:19 12 bit?

04:21:19 13 BY MR. BENNETT:

04:21:21 14 Q. All right. I want to highlight for a moment the date
04:21:24 15 under this headline. Last update, July 16, 2019.

04:21:30 16 Do you see that?

04:21:43 17 A. Yes.

04:21:43 18 Q. This is about two years -- a little less than two years
04:21:47 19 after that email we just looked at, right?

04:21:51 20 A. That's right. The one we just saw was 2017. This one
04:22:07 21 is 2019.

04:22:10 22 Q. All right. And this is an ASUS website, right?

04:22:16 23 A. It appears so. However, I have no way to verify.

04:22:32 24 Q. Okay.

04:22:33 25 MR. BENNETT: Let's scroll down -- yeah, thank

04:22:36 1 you, Denver. Can you blow that up, please?

04:22:39 2 BY MR. BENNETT:

04:22:39 3 Q. If you squint really hard, maybe you can see at the
04:22:48 4 bottom, it says: www.ASUS.com/support/FAQ/1040567.

04:23:08 5 Do you see that?

04:23:09 6 A. Yes, I can see it.

04:23:32 7 MR. BENNETT: Okay. So scroll back up for me,
04:23:35 8 please, Denver.

04:23:35 9 BY MR. BENNETT:

04:23:36 10 Q. And this particular posting, I want to focus on three
04:23:42 11 products that are listed there after the word "product":
04:23:49 12 PA248Q, PA328Q, and PA329C.

04:24:29 13 A. Yes, I can see those.

04:24:30 14 Q. And the purpose of this particular webpage is to serve
04:24:33 15 as a frequently asked question site for potential or actual
04:24:40 16 ASUS customers, right?

04:25:01 17 A. Well, the information I just saw on the bottom of the
04:25:25 18 screen starting from www.ASUS.com, I can verify that part
04:25:32 19 is correct. However, anything after that, I have no way to
04:25:35 20 verify its accuracy.

04:25:38 21 Q. Well --

04:25:40 22 MR. BENNETT: Denver, scroll up for me again,
04:25:43 23 please.

04:25:43 24 BY MR. BENNETT:

04:25:44 25 Q. Let's try a different way then. ASUS has a website,

04:25:52 1 right?

04:25:56 2 A. Right.

04:25:57 3 Q. And it maintains a support page on that website?

04:26:13 4 A. That's right. We do have a support page on our
04:26:17 5 website.

04:26:18 6 Q. And on that support page, it has an FAQ section or a
04:26:25 7 frequently asked questions section, right?

04:26:50 8 A. We do have such section on our website. What I wanted
04:26:57 9 to say just now was I was not sure whether that is from the
04:27:05 10 website.

04:27:08 11 Q. Okay. Looking at it now, Mr. Lin, do you have any
04:27:13 12 reason to think that this is not from an ASUS website?

04:27:16 13 A. It appears so. That's why I told you that I cannot
04:27:37 14 tell.

04:27:38 15 Q. Well, this isn't the first time you have seen this
04:27:43 16 document, is it, Mr. Lin?

04:27:45 17 A. I have seen something similar before. I do have a
04:28:01 18 recollection of that.

04:28:01 19 Q. Right. Where you saw it was in a deposition that we
04:28:06 20 took of you, and we showed it to you there, right?

04:28:11 21 A. It has been awhile from that deposition you took. I
04:28:34 22 don't remember whether that is the occasion I have seen
04:28:45 23 such document.

04:28:45 24 Q. You're right. It has been awhile. Your deposition was
04:28:49 25 taken on November 30, 2020, right?

04:29:00 1 A. I'm sorry. I kind of forgot the date.

04:29:04 2 Q. Well, do you have any reason to disagree with me that
04:29:08 3 it was November 30, 2020?

04:29:19 4 MR. JOSHI: Argumentative.

04:29:22 5 THE COURT: Overruled.

04:29:24 6 A. I really can't answer to that question because I really
04:29:27 7 forgot.

04:29:33 8 MR. BENNETT: Okay.

04:29:33 9 Denver, can you bring up his deposition, please.

04:29:33 10 BY MR. BENNETT:

04:29:40 11 Q. Let's refresh your recollection.

04:30:01 12 All right. Your name is Alvin Lin, correct?

04:30:10 13 A. Yes.

04:30:11 14 Q. And your deposition was taken in the case of Lone Star
04:30:18 15 Technological Innovations v. ASUSTeK Computer, Inc., right?

04:30:22 16 A. There was a deposition taken on me and for a case, but
04:31:08 17 the document you are showing me right now is very
04:31:12 18 complicated. I really can't tell whether that is the case.

04:31:19 19 Q. My question was pretty simple, Mr. Lin. Your
04:31:23 20 deposition was taken in this case, yes or no?

04:31:27 21 A. That's correct. There was a deposition done on me for
04:31:41 22 this case.

04:31:42 23 Q. All right. Now, seeing your deposition here on this
04:31:46 24 video feed, does it refresh your recollection that that
04:31:50 25 deposition occurred on November 30, 2020?

04:31:53 1 A. Well, it says November.

04:32:25 2 Q. Because that's the day it happened, right?

04:32:28 3 A. Well, if that's the month on the document, then that
04:32:51 4 must be the date then, because if you ask me, I really
04:32:55 5 forgot the exact date.

04:32:57 6 Q. Okay. In any event, from that date until now, you have
04:33:04 7 had a chance to review your deposition, right?

04:33:07 8 A. I did not have any way to obtain the records for that
04:33:40 9 deposition of me, though.

04:33:44 10 Q. No one at ASUS gave you a copy of your deposition?

04:33:50 11 MR. JOSHI: Objection, seeks privileged
04:33:53 12 information.

04:33:57 13 THE COURT: I'm going to -- Mr. Bennett, there's
04:34:01 14 been an objection that the question called for privileged
04:34:04 15 information.

04:34:05 16 MR. BENNETT: I asked for no privileged
04:34:07 17 information, just whether a copy of the deposition had been
04:34:11 18 provided to him, Your Honor.

04:34:12 19 THE COURT: I'll overrule the objection.

04:34:45 20 A. No.

04:34:45 21 BY MR. BENNETT:

04:34:53 22 Q. Okay. In any event, between November 30th and today,
04:34:57 23 have you had any occasion to find any fault with, any error
04:35:04 24 in the document we just looked at, Plaintiff's Exhibit 14A?

04:35:28 25 A. Upon the conclusion of that deposition, I don't believe

04:35:51 1 that I have received anything to do with the deposition for
04:35:53 2 me to find out the information during that deposition.

04:35:56 3 Q. Well, you have access to the Internet, don't you,
04:36:00 4 Mr. Lin?

04:36:08 5 A. Yes, I do have Internet.

04:36:10 6 Q. In the almost six months since your deposition, have
04:36:15 7 you tried to find out if the version on ASUS's website is
04:36:18 8 any different than the version I'm showing you in open
04:36:21 9 court right now?

04:36:42 10 A. Well, I did not have any motive to go check any
04:37:02 11 difference for the versions of the website because I was
04:37:08 12 not the person to maintain the website.

04:37:13 13 Q. But your company maintains it, right?

04:37:17 14 A. That is right. The FAQ portion of the website was
04:37:38 15 maintained by the company's staff.

04:37:41 16 Q. Okay. So going back to the document from the company
04:37:47 17 website and looking at the language -- well, let me back up
04:37:53 18 one step real quick.

04:37:55 19 MR. BENNETT: Go ahead, Ms. Josh.

04:37:55 20 BY MR. BENNETT:

04:38:06 21 Q. The purpose of an FAQ, whether it's this one or any
04:38:11 22 other one on ASUS's website, is to answer for customers or
04:38:15 23 potential customers questions they may have about products
04:38:18 24 or product features, right?

04:38:23 25 A. That's right. We do have some type of function like

04:38:46 1 that.

04:38:46 2 Q. I know you had some function like that. My -- my
04:38:52 3 question is different. Let me try it again.

04:38:55 4 The purpose of an FAQ page on ASUS's website is to
04:38:59 5 answer for customers who want to know about a feature
04:39:07 6 certain questions that they have about that feature, right?

04:39:48 7 A. Well, just as I previously said, that it does have that
04:39:54 8 function. However, more to that function, it also serves
04:39:59 9 as a database of knowledge.

04:40:02 10 Q. Knowledge that ASUS wants to share with customers and
04:40:05 11 potential customers, right?

04:40:10 12 A. Well, that's right. That's what we wanted to educate
04:40:28 13 the users on, the knowledge in that matter.

04:40:33 14 Q. And, again, speaking generally, ASUS chooses the
04:40:37 15 features that it thinks customers will want to know about
04:40:41 16 and use to explain on its FAQ page, right?

04:40:49 17 A. That's right. We would put something there for them to
04:41:21 18 know for something they desire to know.

04:41:27 19 Q. In this particular instance, the feature that ASUS
04:41:30 20 wants to answer questions about so that customers may use
04:41:34 21 is the feature of an advanced color adjustment so that
04:41:37 22 users can individually customize hue and saturation for
04:41:46 23 each axis color, right?

04:42:29 24 A. We provide options like that for the users to make the
04:42:36 25 adjustments.

04:42:38 1 Q. Well, you more than provide options. In fact, in this
04:42:43 2 particular document you teach users how to adjust the six
04:42:47 3 colors, red, green, blue, cyan, magenta, and yellow,
04:42:57 4 without affecting the output of other colors, right?

04:43:55 5 A. What that means was that we do provide six options to
04:44:00 6 adjust the six colors. Say, for instance, if I wanted to
04:44:05 7 adjust the color red and when I do that adjustment, the
04:44:07 8 other settings will remain unchanged. That's what I meant.

04:44:14 9 Q. Correct. We know that if you -- let me ask it this way
04:44:18 10 then, and I think we can get on the same page.

04:44:22 11 If a user were to find this page and follow what
04:44:29 12 ASUS teaches the user on this page, it would adjust a
04:44:34 13 single color without adjusting another, right?

04:44:37 14 A. That's not what I meant exactly. What I meant is that
04:45:22 15 here, we would provide six options to do a color
04:45:30 16 adjustment. I can adjust any individual color here like
04:45:33 17 red -- red, green, blue, or other colors. And then while I
04:45:42 18 do that color adjustment, I will not affect any other five
04:45:49 19 colors.

04:45:53 20 Q. Okay. I think --

04:45:59 21 A. What I meant was that will not affect the settings of
04:46:04 22 the other five colors.

04:46:06 23 Q. Okay. But you can adjust one color without affecting
04:46:13 24 another color? That's what this shows users, right?

04:46:18 25 A. That's not correct. Just like I said, when you are

04:46:45 1 adjusting settings for one individual color, that the
04:46:49 2 settings for the other five individual colors will not be
04:46:59 3 affected.

04:47:00 4 Q. So your test -- your testimony is that this is strictly
04:47:07 5 about changing settings and nothing else?

04:47:11 6 A. Well, that's right, because we only provided six
04:47:28 7 options for the users to make adjustments as they desire.

04:47:35 8 Q. Right. And you provide that functionality so that they
04:47:41 9 can individually customize hue and saturation for each axis
04:47:48 10 color according to this document, right?

04:47:51 11 A. We provided options for the users to make adjustments
04:48:31 12 on the six colors independently.

04:48:41 13 MR. BENNETT: At this point, Your Honor, I'm --

04:48:42 14 A. Hues and -- hues and saturations --

04:48:44 15 MR. BENNETT: -- I'm going to object as
04:48:48 16 nonresponsive and move to strike it.

04:48:51 17 THE COURT: I'll sustain it. Ask your next
04:48:54 18 question.

04:48:54 19 BY MR. BENNETT:

04:49:08 20 Q. Mr. Lin, there's no question pending, sir. Let me just
04:49:11 21 really quickly --

04:49:13 22 MR. BENNETT: If I may, Your Honor, I'm not --

04:49:13 23 THE COURT: Please proceed.

04:49:15 24 MR. BENNETT: -- okay, usually in the habit of
04:49:17 25 explaining things like that.

04:49:17 1 BY MR. BENNETT:

04:49:19 2 Q. You have to wait for a question before you can answer
04:49:21 3 anything, okay?

04:49:22 4 Here in a second, your lawyers can ask you
04:49:25 5 questions if they want to, but you have to answer the
04:49:32 6 questions I ask, all right?

04:49:36 7 A. Okay.

04:49:50 8 Q. Thank you.

04:49:52 9 Let's look at the product manual for the first
04:49:58 10 product listed in Exhibits 14A, which is the PA248 series
04:50:07 11 LCD monitor. That's Plaintiff's Exhibit 26-30.

04:50:27 12 Can you see Plaintiff's Exhibit 26-30, Mr. Lin?

04:50:41 13 A. Yes, I can see something on the screen.

04:50:48 14 Q. Okay. Can you read -- well, can you see the words on
04:50:52 15 the screen?

04:50:54 16 A. Yes, I can, because the font is pretty big.

04:51:07 17 Q. Okay.

04:51:09 18 MR. BENNETT: And, Ms. Josh, if you need to
04:51:11 19 translate those few words on the page to help him out,
04:51:14 20 please feel free.

04:51:32 21 A. That's right. That is the translation.

04:51:32 22 BY MR. BENNETT:

04:51:41 23 Q. When you say, "that's right, that is the translation,"
04:51:45 24 do you understand that page as you read it, Mr. Lin?

04:51:56 25 A. I can only the -- recognize these simple English words,

04:52:07 1 because they are quite simple words.

04:52:09 2 Q. All right. I want to direct your attention to a
04:52:13 3 particular part of this particular manual.

04:52:19 4 MR. BENNETT: Denver, if you'll go to Page 2283.

04:52:37 5 A. Okay.

04:52:37 6 BY MR. BENNETT:

04:52:39 7 Q. And before I ask any specific questions about this --
04:52:42 8 these sections of the manual, I want to ask a more general
04:52:46 9 question, which is this: We heard earlier from ASUS's
04:52:50 10 lawyers about the ProArtist Series. Are you familiar with
04:52:56 11 that series of displays?

04:53:22 12 A. Well, I kind of know some. I will try my best to
04:53:26 13 answer your questions.

04:53:27 14 Q. My question simply, Mr. Lin, is whether you know about
04:53:33 15 ProArtist displays, like the fact that they exist and ASUS
04:53:38 16 sells them?

04:53:41 17 A. I do know that we have these series of displays.

04:53:58 18 Q. Okay. And ASUS sells these displays to more than just
04:54:05 19 artists, right?

04:54:13 20 A. Because I am engineer -- so if you're asking me
04:54:34 21 something to do with the sales, I may not be able to give
04:54:38 22 you a very confirmed answer in that matter.

04:54:49 23 Q. Fair enough. Let's go back to Page 2283.

04:54:56 24 Under Section 2, on Page 2283, there are two
04:55:00 25 bullets kind of midway down the page there: Saturation and

04:55:04 1 Hue.

04:55:04 2 Do you see those?

04:55:32 3 A. I do see "Saturation" and "Hue" on the screen now.

04:55:38 4 Q. Okay. And this is part of the user manual for this
04:55:43 5 product that is teaching a user how to set the desired
04:55:49 6 color on the monitor, right?

04:55:55 7 A. From what I can see right now, it appears so.

04:56:19 8 Q. Okay. And then at the very bottom, there's one last
04:56:26 9 bullet point that says: Advanced Setting.

04:56:41 10 Do you see that bottom bullet point where it says:
04:56:47 11 Advanced Setting?

04:56:54 12 A. Yes, I can see that.

04:56:55 13 Q. Okay. And on the next page, it shows -- it shows what
04:57:04 14 those advanced settings are, right?

04:57:07 15 A. From what I can see, yes.

04:57:32 16 Q. Okay. And that first bullet point under Advanced
04:57:39 17 Setting is how to adjust the 6-axis hue, right?

04:57:47 18 A. From the picture I can see, yes.

04:57:56 19 Q. And the second bullet point teaches users how to adjust
04:58:02 20 the 6-axis saturation adjustment, right?

04:58:10 21 A. From the picture I see, yes.

04:58:18 22 Q. All right. And accessing either of these settings
04:58:23 23 under Advanced Settings will allow a user to change only
04:58:28 24 the red hue, right?

04:58:40 25 A. Yes.

04:58:49 1 Q. Or only the yellow saturation adjustment, right?

04:58:55 2 A. Yes. We allow them to make adjustment on one of the
04:59:13 3 six options provided.

04:59:16 4 Q. Well, Mr. Lin, you don't just allow them, you show
04:59:20 5 them, right?

04:59:22 6 A. Well, I am an engineer, and I provided the six options.
04:59:49 7 However -- and how to customize again these technical
04:59:56 8 documents is really not my job.

04:59:57 9 Q. Well, regardless of whether it's your job, Mr. Lin, can
05:00:02 10 you just agree with me, looking at your -- ASUS's own user
05:00:08 11 manual, that if a user follows the steps in this user
05:00:12 12 manual, if they follow the top one, they can adjust only
05:00:15 13 the red hue adjustment, right?

05:00:29 14 A. If I were the user, then I would know that I do have
05:00:56 15 six options to make adjustment like that.

05:01:04 16 Q. You -- right. And if you follow the manual, you will
05:01:08 17 make those adjustments, right?

05:01:37 18 A. I don't understand why you ask this question.

05:01:45 19 Yes, the users, they do have the six options that
05:01:51 20 you made the six-color adjustment like that.

05:01:54 21 Q. Okay. So if someone followed the directions from
05:02:01 22 ASUS's PA248 series manual, they would have adjusted the
05:02:10 23 hue of the display for one color?

05:02:39 24 A. Yes, he would be able to adjust one of the six color
05:02:53 25 options --

05:02:54 1 Q. Okay.

05:02:57 2 A. -- independently, yes.

05:02:58 3 Q. Let's turn to a different part of the manual.

05:03:03 4 MR. BENNETT: Let's go, Denver, please, to 2411.

05:03:46 5 Are you still in 2630?

05:04:17 6 That's it. If you scroll up from the bottom, it
05:04:24 7 should read, screen image has color defects.

05:04:28 8 Actually, before you go there, sorry.

05:04:28 9 BY MR. BENNETT:

05:04:31 10 Q. Okay. Mr. Lin, before we get into the particulars of
05:04:35 11 this particular page, I want to ask you one question about
05:04:39 12 the title of the document so we can all understand what its
05:04:48 13 purpose is.

05:04:49 14 3.3, Troubleshooting FAQ, F-A-Q. Do you see that?

05:05:08 15 A. I can see that.

05:05:11 16 Q. Okay. And the purpose of a troubleshooting FAQ in a
05:05:18 17 user manual -- and you know this as a technical person --
05:05:21 18 is to coach and help users solve their own technological
05:05:28 19 problems with their monitor, right?

05:05:48 20 A. Well, if they encounter some problems -- and they can
05:06:03 21 come here to find information they need for the
05:06:06 22 troubleshooting purpose.

05:06:09 23 Q. Okay. Good. Right. So the very first one, if a user
05:06:13 24 is having problems with their monitor powering on, they
05:06:18 25 look at the very first one, and it gives them tips on how

05:06:23 1 to solve that problem, right?

05:06:24 2 A. From what is showing on the screen, yes.

05:06:46 3 Q. Okay. And then a little farther down, there's an
05:06:49 4 identified problem. Screen image has color defects. White
05:06:55 5 does not look white.

05:06:56 6 Do you see that?

05:06:58 7 A. Yes, I can see it.

05:07:13 8 Q. Okay. And there are three possible solutions that ASUS
05:07:18 9 gives the user, and one of them is adjust the RGB color
05:07:24 10 settings or select the color temperature via OSD, right?

05:07:31 11 A. I can see that.

05:07:50 12 Q. Okay. And ASUS suggests this solution so that users
05:07:56 13 can solve their own color defects or adjust the colors to
05:08:02 14 solve color defects on their monitors, right?

05:08:07 15 A. Ms. Interpreter, would you help me to ask them to
05:08:39 16 verify?

05:08:40 17 And this specific document is for which model,
05:08:43 18 please?

05:08:47 19 MR. BENNETT: Denver, go to the very first page.

05:08:47 20 BY MR. BENNETT:

05:09:09 21 Q. That's the model, Mr. Lin.

05:09:17 22 A. I can see that. Thank you.

05:09:18 23 Q. Okay. So can you answer my question now, please?

05:09:31 24 A. Sorry, I interrupted you before you finished asking me
05:09:36 25 questions.

05:09:37 1 Would you please repeat your question?

05:09:43 2 Q. If I remember it, I will, yes, sir.

05:09:45 3 I think my question was, what ASUS does here is it
05:09:51 4 tells users and teaches them how to solve their own color
05:09:59 5 defect problem in this Troubleshooting FAQ, and that
05:10:03 6 particular teaching is adjust the RGB color settings.

05:10:13 7 A. Well, because this specific document was not written by
05:11:06 8 me, I.

05:11:08 9 Can only tell you from an engineer perspective,
05:11:14 10 you can achieve the RGB adjustment through color
05:11:21 11 temperature selection. It's actually just the opposite,
05:11:37 12 and may I reverse order.

05:11:40 13 What I meant is that you can adjust RGB in order
05:11:44 14 to achieve the color temperature.

05:11:51 15 MR. BENNETT: I'm sorry. This is just off the
05:12:05 16 record.

05:12:05 17 (Discussion off the record.)

05:12:09 18 MR. BENNETT: Okay. Your Honor, I'm about to
05:12:13 19 change a different document, but I do see it's past 5:00.
05:12:18 20 I can keep going if you want me to or --

05:12:19 21 THE COURT: It is now, Mr. Bennett. I think we
05:12:21 22 should break for the day.

05:12:23 23 MR. BENNETT: Okay.

05:12:25 24 THE COURT: All right. So ladies and gentlemen of
05:12:25 25 the jury, it's been a long day. I appreciate your focus

05:12:28 1 and attention throughout the afternoon.

05:12:30 2 I'll ask you to be back about 8:45 in the morning.

05:12:34 3 When you come in in the morning, if you will identify
05:12:37 4 yourself to the court security officers, they will direct
05:12:40 5 you up here, if not escort you. And so we will hope to see
05:12:44 6 you then, and we'll plan to start here in the courtroom at
05:12:47 7 9:00 a.m.

05:12:47 8 As a reminder, you should not talk about the case
05:12:50 9 with anyone until all of the evidence has been presented,
05:12:55 10 and I have instructed you on the law. Likewise, don't do
05:12:59 11 any independent investigation or research into the matter
05:13:02 12 involved here or the attorneys or the parties. And,
05:13:06 13 likewise, don't post anything about any of your
05:13:10 14 observations throughout the day.

05:13:13 15 So I'll look forward to seeing you in the morning,
05:13:17 16 and I hope you all have a pleasant evening.

05:13:20 17 COURT SECURITY OFFICER: All rise for the jury.

05:13:20 18 (Jury out.)

05:13:52 19 THE COURT: Okay. Please be seated.

05:13:54 20 Ms. Josh and Mr. Lee [sic], let me ask you all to
05:13:59 21 be back online no later than 8:45 Texas time tomorrow so
05:14:04 22 that we can start promptly at 9:00 a.m. Texas time with the
05:14:10 23 continued examination of the witness.

05:14:14 24 Do either of you have any questions about that?

05:14:56 25 THE WITNESS: So, Your Honor, you said a lot of

05:14:57 1 things here, and I just want to make sure that I did not
05:15:00 2 miss anything, I did not do anything that I'm not supposed
05:15:04 3 to do. I need to follow all the rules here.

05:15:07 4 THE COURT: Certainly. I'm just asking that you
05:15:12 5 all be back online at 8:45 ready to go.

05:15:16 6 I will suggest this, for purposes of maybe
05:15:21 7 speeding things up a little bit, I'll just tell you,
05:15:27 8 Mr. Lee [sic], that, you know, if you can answer the
05:15:31 9 question more succinctly with a yes or no, that's all the
05:15:38 10 better.

05:15:39 11 When you have completed your direct examination,
05:15:44 12 counsel for your employer will be able to ask any questions
05:15:50 13 they want to, and you will be able to provide a fuller
05:16:00 14 explanation. But for purposes of the examination by the
05:16:03 15 Plaintiff, if you can give yes-or-no answers, that's fine.
05:16:06 16 If you can't give yes-or-no answers to any that are asked,
05:16:10 17 if you'll just explain that, and then Mr. Bennett can ask a
05:16:15 18 different question if he wishes to do so.

05:17:35 19 THE WITNESS: Okay. I got it.

05:17:37 20 THE COURT: Okay. Anything further for the
05:17:39 21 witness and the translator before we disconnect them?

05:17:43 22 MR. JOSHI: Yes.

05:17:55 23 THE WITNESS: I do not have any other questions.
05:17:57 24 Thank you, though.

05:17:58 25 THE COURT: Okay. Hold on just a moment,

05:18:01 1 Ms. Josh.

05:18:02 2 MR. JOSHI: Your Honor, do you have any -- do you
05:18:05 3 have any instructions for interactions between counsel --

05:18:08 4 THE COURT: Yes. No interaction whatsoever.

05:18:11 5 MR. JOSHI: Would you please make that clear?

05:18:13 6 THE COURT: Yes, I will. So I don't know who the
05:18:16 7 in-house counsel is, but, Mr. Lee, let me make this clear
05:18:20 8 to you.

05:18:22 9 The rules on what a witness may say in a situation
05:18:25 10 like this or discussions that may be had with a -- an
05:18:30 11 attorney is, given the fact that you're there and we're
05:18:34 12 here, I think under the specific circumstances of this
05:18:39 13 case, you should not have any correct -- any communications
05:18:46 14 at all with any of the attorneys overnight about the
05:18:49 15 subject of your testimony or the testimony you have given
05:18:55 16 today, your expected testimony tomorrow, or any knowledge
05:19:00 17 about this case. Do you understand all of that?

05:19:03 18 THE WITNESS: So I wanted to clarify. You said do
05:19:52 19 not communicate with anyone or only my attorneys?

05:19:57 20 THE COURT: No, sir. You may not communicate with
05:20:01 21 your attorney about the substance of the testimony. So
05:20:05 22 thank you for asking that clarification.

05:20:08 23 And if you need to have some discussions about the
05:20:13 24 technical arrangements that we have made about your
05:20:17 25 testimony, that is fine. But what I'm instructing you,

05:20:21 1 sir, is not to have any substantive conversations about
05:20:26 2 your knowledge about the case, your testimony this
05:20:30 3 afternoon, or your expected testimony tomorrow.

05:21:12 4 THE WITNESS: I got it.

05:21:14 5 MR. JOSHI: Thank you, Your Honor.

05:21:15 6 THE COURT: Okay. All right.

05:21:17 7 All right. We will see you all in the morning.

05:21:21 8 What else do we need to address before we adjourn?

05:21:26 9 MR. BENNETT: Just -- I didn't object to
05:21:30 10 responsiveness that much today. I tried. But tomorrow I'm
05:21:34 11 going to have to do more to get -- if it doesn't change.

05:21:36 12 THE COURT: You know, Mr. Bennett, you try your
05:21:38 13 case like you want to. If you make the objection, if I
05:21:42 14 think, you know, an order striking the testimony is
05:21:46 15 appropriate, that's what I'll do.

05:21:50 16 So, you know, to the extent you can ask yes or no
05:21:54 17 questions, I mean, I would encourage you to do that. If
05:22:01 18 you don't get -- if you don't get, you know, narrow
05:22:04 19 answers, I will strike the -- I will strike the testimony.

05:22:08 20 Obviously, Mr. Joshi, you'll have an opportunity
05:22:10 21 to ask whatever you want of this witness on cross-examine.

05:22:14 22 So to the extent we can move it along, I think
05:22:18 23 that's certainly helpful.

05:22:20 24 Anything else we need to discuss from --

05:22:22 25 MR. OLIVER: One logistical question, and I am

05:22:25 1 going to apologize in advance in case you've already
05:22:29 2 addressed it in one of the many orders that I may have
05:22:31 3 missed.

05:22:31 4 THE COURT: Certainly.

05:22:32 5 MR. OLIVER: If you want to tell me, just go look
05:22:34 6 through the orders, I will.

05:22:35 7 THE COURT: I might do that.

05:22:37 8 MR. OLIVER: Does the Court provide a running
05:22:40 9 total of how much time each party has used?

05:22:41 10 THE COURT: We will.

05:22:41 11 MR. OLIVER: Okay.

05:22:42 12 THE COURT: We will provide you, and we can
05:22:43 13 provide you today that number. You will have to ask for
05:22:46 14 it. We won't do it as a matter of routine, so you're
05:22:50 15 welcome to ask Mrs. Schroeder at the end of the day.

05:22:53 16 MR. OLIVER: Okay. Thank you.

05:22:54 17 THE COURT: To the extent there are any problems
05:22:57 18 that crop up over the night, and I'm very serious about
05:23:02 19 this, I do expect the parties to try to resolve them. I
05:23:07 20 have seen a lot of things today that basically amounted to
05:23:11 21 the other side hearing what the other side was saying for
05:23:15 22 the first time in the room. And I expect more of you all
05:23:19 23 as professionals.

05:23:21 24 So if there are issues that -- and I'm not fussing
05:23:26 25 at you. I'm just saying if there are issues that crop up,

05:23:31 1 that you all have with one or the other, start with trying
05:23:35 2 to resolve it by agreement, working through some sort of a
05:23:38 3 compromise. And if you can't, bring it to me, and I'll be
05:23:42 4 more than happy to get it resolved. But I do want you to
05:23:46 5 at least have made a serious attempt to resolve it and at
05:23:50 6 least to substantively discuss it.

05:23:53 7 Any questions about that?

05:23:55 8 MR. BENNETT: No, Your Honor. We understand.

05:23:59 9 THE COURT: Okay. Good. See you in the morning.

05:24:02 10 COURT SECURITY OFFICER: All rise.

05:24:06 11 (WHEREUPON, these proceedings were adjourned,
12 5:24 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COURT REPORTER'S CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter held on May 17, 2021, to the best of my ability.

May 17, 2021
Date

s/ KATHRYN McALPINE/
KATHRYN McALPINE, RPR, CSR, CCR